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THE ROMAN COLONATE

The Theories of its Origin

BY

ROTH CLAUSING, M. A.

Assistant Professor of Economics, University of Rochester
Sometime Garth Fellow, Columbia University

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY

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INTRODUCTION

THE work of Professor Clausing was undertaken at my suggestion five or six years ago, and now that it is finished I cannot help feeling that an important task has been accomplished. It is, to begin with, the only comprehensive and up-to-date treatise on the colonate; it reviews all the theories of the colonate for the last hundred years and critically examines the sources upon which they are based; and finally in the last two chapters, Professor Clausing presents effectively the material that led him to share my view on the subject.

All the old theories had their day in court, and learned criticism is likely to be centered, and rightly so, upon the theory that Professor Clausing and myself share in common. In the Digest, the tenant farmer or the *colonus* was free to move. In the Codes he is adscribed and bound to the soil. What was the object of such drastic abbreviation of the tenant's civil liberties? He was obviously bound to the soil because he would not stay on the soil if not bound. Other attempts had been made before to retain an agricultural population, and only after all other attempts had failed, was adscription to the soil resorted to. Of the fact that the agricultural population was abandoning the land, we have ample, indeed, conclusive evidence. If the land was abandoned in such wholesale fashion, does the idea not suggest itself that the people were leaving because agriculture was not profitable? Had cultivation been profitable, there would have been no need of emphyteutic legislation, nor would it have been necessary to bind the tenant to the soil. The diminishing agricultural production and with it the dwindling of the agricultural population troubled the Roman admin-

istration very seriously. This the laws and the literature of the time make clear.

Take the *Constitutio de Scyris,* discovered in 1824, which later led Savigny to accept the theory of Zumpt that the origin of the colonate is to be found in the settlement of barbarians. This very document gives the reason for that particular settlement—"*Licet . . . pro rei frumen(tari)ae angustiis*". . . .—the decrease in agricultural production.

Is the progressive exploitation and final exhaustion of the fields of Italy and later on of the provinces a mere theory? What do the ancient agricultural writers tell us? Will not the critic admit that those agricultural writers knew as much as was to be known about the agricultural and agrarian conditions of their times? It would be insane to disregard their consensus of opinion. Most of the agricultural writers are of course lost now; but what does Columella, for instance, tell us about the prevailing opinion? He begins the first chapter of the second book with the following lines: "You ask me, Publius Silvinus—and I hasten to reply to you—why I began my former book by *refuting the ancient opinion of nearly all agricultural writers, and by rejecting as false their idea that the soil, worn out by long cultivation and exhausted, is suffering from old age.*" The critic will observe that I cannot claim credit for an exhaustion-of-soil theory; but that this so-called theory was considered a fact by nearly all ancient writers.

Now Columella tells us that he differs from his predecessors; but in what respect? He says that the soil is not suffering from old age, but that if treated properly it would respond and improve. Something that we of course know perfectly well. However, when Columella is considering not the possible productivity of Italian soil under skilful treatment, but actual productivity, he tells us in Chapter III of the third Book, that no one can remember when the soil produced four-fold in Italy. "*Nam frumenta majore qui-*

dem parte Italiae quando cum quarto responderint, vix meminisse possumus." The same tale we hear from all writers, whether they are of the first or of the fourth century. One letter of Symmachus is particularly interesting. He frankly admits that he does not expect to make his farm profitable, and that he can keep it up only by constant expenditure; "for," he says, "it has come to be the rule in our age that land which once fed us now must itself be fed."

Under such conditions, one does not have to look very far for the reason and origin of the colonate. The reader will perhaps concede that it is not a theory or a construction which Professor Clausing and I are maintaining, but a frank admission of the facts that confront us. The freeman is bound to the soil for precisely the same reasons that led to the improvement in the condition of the agricultural slave. The agricultural slave too is bound to the soil in the hope of maintaining agricultural production and tillage. That this production is unprofitable and that great is the temptation to sell the agricultural slaves off the land, leads the administration to drastic legislation. Here is a law that refers to the *originarii* and *censiti*. It absolutely forbids that they be sold off the land. "Nor by tricky misconstruction shall the law be so evaded, as has repeatedly been done in the case of *originarii*, that an *entire estate shall be deprived of tillage* by transferring a small portion thereof to the purchaser of the slaves." [1]

It is the question of tillage, the preservation of agricultural production, that looms largest, and to maintain agricultural productivity force was required. Thus the agricultural slave as well as the free tenant farmer was bound to the impoverished soil—and this is the solution of the colonate problem offered in this work, a solution which I trust will stand the test of time.

VLADIMIR G. SIMKHOVITCH

[1] *C. J.*, xi, 48, 7.

AUTHOR'S PREFACE

THERE are few subjects in economic history of greater importance than the development of the institution of the Roman colonate. The legal attachment of the tenantry of the Roman Empire to the soil serves as the connecting link between the agrarian life of antiquity and that of medieval Europe. The colonate was intimately connected with the decline of ancient civilization; and it ushered in a form of agrarian organization which was to persist through most of the Middle Ages. Yet, important as the transition to the colonate was in the economic life of the Roman Empire, it attracted singularly little attention from contemporaneous writers, at least from those whose works have been preserved. The writers whose books became known in Rome and the other great cities of the Empire wrote of wars and barbarian invasions, of corruption and court intrigues, of the persecution and triumph of Christianity. The residents of a city are seldom interested in the troubles of the farmers; and in an age when the literate population was almost altogether metropolitan a change in the condition of the rural classes received little notice.

Yet there is no doubt that there was a great transformation in the condition of the agricultural population of the Roman Empire between the first and fourth centuries. Scanty as the sources are in regard to the life of the peasantry, writers of the late Republic and the early Empire offer unmistakable evidence that the cultivators of the soil at that time were composed of two classes, freemen, who were either tenant farmers or small proprietors, and slaves. The great jurists, whose decisions were collected in the

Digest of Justinian, show that this condition continued to the third century; and the jurists are more explicit than any of the preceding writers in describing the condition of the tenant farmers or coloni of their times. The coloni to whom the Digest referred were unquestionably freemen in every respect. They cultivated their land according to the terms of a five-year lease and paid a money rent. They were perfectly free to give up their holdings at the expiration of their leases and go any place they desired. Proprietors were forbidden to make any attempt to retain them on their estates against their will.

But a century later the Theodosian and Justinian Codes present a picture of a colonus of a wholly different character. The colonus appears there as a tenant attached to the estate of his landlord in perpetual and hereditary bonds. It is true that he had retained certain characteristics of a freeman. He could contract a legal marriage, he might become a soldier or a priest with the consent of the proprietor, and he was permitted to resort to the courts of law, even against his landlord, under certain contingencies. But under no circumstances was he allowed to sever the bonds which held him to the estate on which he was born. If he tried to escape he was brought back in chains and punished like a runaway slave. Anyone who sheltered him as a fugitive was heavily fined. And all the force of the administration was bent toward restoring him to his native fields, even though he had succeeded in escaping detection and establishing himself elsewhere for thirty years or more.

The mystery of the origin of the serf-colonate, as baffling as it is important, has called forth the best efforts of many of the leading scholars in economic and legal history of the past hundred years. "Nulle question peut-être," says a noted French savant,[1] "ni historique ni juridique, n' a fait

[1] Beaudouin in the *Nouvelle revue historique de droit français*, vol. xxi (1897), p. 697.

naître plus de systèmes ni écrire plus de pages." Classical works have been scanned with the most meticulous care in order to discover any information which might throw some light on the subject. Epigraphical expeditions have been organized in the hope of discovering new inscriptions which might be able to fill the gaps which the extant writings of antiquity have left. Fairly consistent accounts have been given by many writers of the gradual deterioration in the condition of the tenant farmer preceding their legal attachment to the soil. But the cause of the *adscriptio glebae* remains as much an enigma as ever.

Explanations of all sorts have been offered to account for the origin of the colonate, but the theories which have received the most attention fall into two main types. One group of scholars has searched assiduously for a prototype of the colonate; while the other group has sought to connect the colonate legislation with the administration of taxation after the reforms of Diocletian. The colonate has been related by the first group to dependent relationships which existed in early Italy and Greece, in Egypt, Asia Minor, Germany, and Gaul; and it has been ascribed to the supposed semi-servile status of barbarian settlements in the northern provinces of the Empire in the second and third centuries of our era. Yet even if these earlier dependent classes could be shown to be far more similar to the coloni of the Codes than the meagre information which is available concerning them seems to warrant, it would still remain to be proved that the colonate was formed in direct imitation of an earlier type of servile tenure, and not due to causes and conditions of the time. And supposing that this could be done, the problem would not yet be solved, but merely be removed one step further back; for it would then be necessary to explain the *raison d'être* of the earlier servile status.

The theory that the colonate arose out of the necessities

of tax administration, while it contains certain elements of plausibility, fails to be completely satisfactory in accounting for such a revolutionary change as the transformation of the free tenantry into a semi-servile class bound to the soil. A large and reliable revenue was indeed absolutely necessary to meet the cost of maintaining the greatest empire the world has ever known. Yet for centuries the administration had found the tribute sufficient to meet its needs without proving an insupportable burden to the tax-payers. The theorist who would prove that the coloni were attached to the soil to facilitate the collection of taxes will not have established an acceptable theory simply by showing that an intimate relation existed between the adscription of the coloni and the administration of taxation; for he still has the more important task of explaining why taxation weighed so heavily upon the citizens of the late Roman Empire that the old system of tax collection proved inadequate and that it was necessary to resort to methods altogether out of harmony with the whole character of Roman institutions; and if he would follow this to its logical conclusion he would be brought face to face with the problem of the decay of Roman civilization itself.

It seems to the writer that the adscription of the tenantry to the soil can only be properly understood when it is considered in close connection with the causes which led to the decline of the Roman Empire. Previous types of servile tenure may have had some influence in moulding the exact form which the colonate assumed. The exigencies of taxation may have been the actual occasion which led a worried emperor to take the drastic step of binding the coloni to the soil. But had the Empire been in a vigorous condition no such measure would ever have been considered. No nation has ever had greater respect for law and custom than the Romans, and the arbitrary creation of a serf class

would have been unthinkable except to meet a supreme emergency. And this supreme emergency, in the opinion of the writer, was no less a crisis than the threatened débâcle of ancient civilization itself.

In the following pages, after a brief account of the condition of the coloni as they are described by the Codes, the writer will present in some detail the various theories which have been advanced in explanation of the origin of the colonate and the classical and epigraphical texts upon which these theories are based. Such a review of the theories of the colonate has not been made since Heisterbergk's *Entstehung des Colonats*[1] in 1876; and as much new material has been discovered in Africa and Egypt in the past two generations modern scholars have been able to deal with the problem of the origin of the colonate considerably more adequately than Heisterbergk and his predecessors. In the last two chapters the writer will trace the history of the Roman tenantry and show how their condition was affected in the course of time by what appears to have been a decline in the fertility of the soil, first in Italy and later in the provinces. Finally attention will be called to the sources which seem to point to the fact that the soil of the Empire was becoming completely exhausted in many districts; and the thesis will be presented that the coloni were bound to the soil to enforce the cultivation of the fields which did not yield a large enough product to induce cultivation for the sake of individual profit and which would otherwise have been deserted—a disaster of such serious consequences that it threatened the continued existence of the Roman Empire.

Grateful acknowledgment must be made of the writer's indebtedness to Professor Simkhovitch, at whose suggestion this study was made, and whose teachings have been the source of many of the writer's ideas. He has shown an

[1] Pp. 1-62.

unflagging interest in the work and has been most generous in giving his time in advice and criticism. Professor Donald MacFayden of Washington University has read several chapters of the manuscript and has made many valuable suggestions. The author is also indebted to Professor Harrison R. Steeves and Dr. Emery E. Neff of the English Department of Columbia University, to Professor Steeves for coining the word "adscription" and to Dr. Neff for helpful suggestions.

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CHAPTER I

The Coloni of the Codes

The most definite information which is to be found concerning the colonate is contained in the Roman Codes. But even there, although the coloni are mentioned in almost one hundred and thirty imperial constitutions,[1] the information concerning their condition is neither as ample nor as precise as we should desire. The first certain reference in the Codes to coloni bound to the soil was in a rescript of Constantine of 332 A. D.[2] This constitution, however, is not the original law which established the colonate but merely a regulation which provided that coloni who had fled from the land to which they were attached should be returned and punished. The law which first created the colonate, if indeed it was included in the Codes, at any rate has not been preserved. Nor do the Codes, as they have come down to us, contain a general law which fixed with precision the legal status of the coloni and stated definitely what rights the coloni enjoyed and what obligations they owed to their landlords and to the state. Most of the constitutions in which the coloni are mentioned were not directly concerned with the coloni as such. The maintenance of agriculture and the uninterrupted collection of the imperial taxes were the principal objects of these imperial rescripts. The coloni, for the most part, were only mentioned incidentally.[3]

[1] For the complete list of texts see Bolkestein, *De Colonatu Romano ejusque Origine*, pp. 181-187.

[2] *Cod. Theod.*, xi, 17, 1. Ed. Mommsen and Meyer (Berlin, 1905).

[3] *Coloni* was the most common designation used in the Codes for agri-

However, the information contained in the Codes is sufficient to offer a fairly adequate understanding of the legal status of the coloni from the time of Constantine to the time of Justinian.[1] The colonus occupied a position in society which was legally not that of a slave, not that of a freeman, but was an intermediate condition between the two which possessed certain characteristics of each. Coloni (*adscripticii*) were placed in opposition both to freemen (*liberi*) and slaves (*servi*) in a rescript of Justinian of 530.[2] A law of Theodosius I, Arcadius, and Honorius declared that coloni "should be regarded as freemen in their personal condition yet they should be held as slaves of the land itself on which they were born."[3] The law of Constantine of 332, which is our first certain reference to serf-coloni, stated that "those coloni, who are planning flight, should be reduced by bonds to a slave's status, so that they may be compelled by virtue of a slave's condemnation to perform tasks which are befitting free persons."[4] Again, in 409, in settling a tribe of the Huns within the Empire the Emperors Honorius and Theodosius II decreed that they should be dis-

cultural tenants bound to the soil. But we also find the terms *adcripticii, tributarii, inquilini, originarii, originales, censiti, censibus adscripti, censibus obnoxii,* and other appellations which were used as practically synonymous to *coloni.* For references see Bolkestein, *op. cit.*, p. 36.

[1] For more complete accounts of the legal status of the coloni than that contained in this work see Savigny, "Ueber den Römischen Colonat," in *Vermischte Schriften* (Berlin, 1850), vol. ii, pp. 1-40; Fustel de Coulanges, "Le colonat romain," in *Recherches sur quelques problèmes d'histoire* (Paris, 1884), pp. 87-137. Terrat, *Du colonat en droit romain* (Versailles, 1872), pp. 17-84; Bolkestein, *De Colonatu Romano ejusque Origine* (Amsterdam, 1906), pp. 1-82.

[2] *Cod. Just.*, xi, 48, 21. Ed. Krueger and Mommsen (Berlin, 1904-1906).

[3] *Cod. Just.*, xi, 52, 1. "...licet condicione videantur ingenui, servi tamen terrae ipsius cui nati sunt aestimentur."

[4] *Cod. Theod.*, v, 17, 1. "Ipsos etiam colonos, qui fugam meditantur, in servilem condicionem ferro ligari conveniet, ut officia, quae liberis congruunt, merito servilis condemnationis compellantur inplere."

tributed to landlords as coloni. "Moreover," continued the rescript, "the landlords shall see to it that their services are those of freemen . . . and no one shall be permitted to drag them into slavery." [1] The services of freemen which were required of the coloni, were certain specified kinds of farm work (*ruralia obsequia*) [2] and not the wholly arbitrary duties which a master could require of his slaves.

The colonus possessed certain rights which the slave did not enjoy. He could contract a legal marriage [3] which was not possible for a slave.[4] He could become a priest [5] or a soldier,[6] both of which occupations were closed to slaves.[7] However, it was not possible for the colonus to enter either of these vocations of his own free will, but he was obliged to obtain the consent of the landlord in each instance; [8] and, in case the colonus wished to become a priest, it was necessary for him in addition to secure another peasant to take up his plot of land.[9] Consequently the freedom of the coloni to enter the army or priesthood was decidedly limited in practice, for ordinarily the proprietors would strenuously object to allowing their tenants to leave. One of the obligations of the proprietors was to furnish recruits,[10] but Vegetius complained that they continually offered the army men of poor quality,[11] whom no doubt they had found useless for agriculture.

[1] *Cod. Theod.*, v, 6, 3. "Opera autem eorum terrarum domini libera (utantur) . . . nullique liceat . . . eos in servitutem trahere."

[2] *Cod. Just.*, i, 3, 16.

[3] *Cod. Just.*, xi, 48, 24; xi, 69, 1, *etc.* *Cf.* Bolkestein, *op. cit.*, pp. 34-35.

[4] *Dig.*, xlviii, 20, 5, 1; *Nov.*, 22, 10.

[5] *Cod. Just.*, i, 3, 36, *pr.*

[6] *Cod. Theod.*, vii, 13, 6; *Nov. Val.*, vi, 1, 1.

[7] *Cod. Just.*, i, 3, 36, 1; *Cod. Theod.*, vii, 13, 8.

[8] *Cod. Just.*, i, 3, 16; xii, 33, 3.

[9] *Cod. Just.*, i, 3, 16.

[10] *Cod. Theod.*, vii, 13, 7. *Cf.* Karlowa, *Römische Rechtsgeschichte* (Leipzig, 1885), vol. i, p. 921.

[11] Vegetius, *De Re Militari*, i, 7.

The coloni could acquire personal property, which like the personal property of a slave was called *peculium*.[1] But while the *peculium* of the slave was legally under the ownership of his master [2] the *peculium* of the colonus was his own legal property and could not be taken away from him by the landlord. However, the colonus was not permitted to alienate any part of his *peculium* without the consent of the landlord,[3] a measure which was found necessary no doubt to prevent any diminution in the productive equipment of the estate.[4] Besides personal property it was even possible for a colonus to acquire property in land in addition to the land which he held as a colonus.[5] Ordinarily, of course, the plots of land which the coloni acquired were very small,[6] but occasionally we read of coloni possessing in their own name farms of more than twenty-five *jugera*.[7] In case a colonus possessed a farm the land was registered in the tax-rolls under his own name and he paid the land tax directly and not through his landlord.[8]

The colonus also possessed greater rights than a slave before the courts of law. Under the Republic the slave was almost wholly at the mercy of his master but under the Empire the slave was protected by the law against most crimes against his person.[9] However, in addition to protecting the colonus from injuries against his person or that of his family,[10] the law permitted the colonus to appeal to the courts

[1] *Cod. Theod.*, v, 19, 1; *Cod. Just.*, xi, 48, 19; xi, 48, 23, 5.

[2] *Cf.* Buckland, *The Roman Law of Slavery* (Cambridge, 1908), p. 187 for references.

[3] *Cod. Theod.*, v, 19, 1; *Cod. Just.*, xi, 50, 2, 3

[4] *Cf.* Savigny, *op. cit.*, pp. 19, 28-29; Terrat, *op. cit.*, pp. 62-64.

[5] *Nov.*, 128, 14. *Cod. Just.*, xi, 48, 4.

[6] *Cod. Just.*, xi, 48, 4, "... quantulacumque possessio."

[7] *Cod. Theod.*, xii, 1, 33, "... quicumque ultra xxv iugera privato dominio possidens ..."

[8] *Cod. Just.*, xi, 48, 4; xi, 48, 20, 3.

[9] *Cf.* Buckland, *op. cit.*, pp. 36-38.

[10] *Cod. Just.*, xi, 50, 2.

in any question affecting his status as a tenant. If the landlord arbitrarily raised the rent the colonus was given a right of action against him, first by Constantine,[1] and later by Arcadius and Honorius.[2] In case a peasant denied that he was rightfully the colonus of a certain proprietor the determination of his condition was left to the jurisdiction of the courts.[3] Finally, if a landlord had taken possession of land which a colonus claimed as a part of his tenancy the colonus was allowed to bring suit against the landlord to recover his holding.[4]

The coloni thus possessed a number of rights which distinguished them clearly from slaves. Yet in many respects their condition was very similar to that of the slaves. "It is almost as though they (the coloni) were surrendered in a kind of servitude to those to whom they are subject for their annual dues and the obligations of their condition," said a law of Arcadius and Honorius.[5] "For what difference can be found between slaves and coloni (*adscripticii*)," asked Justinian, "since each is placed under the power of his lord?"[6] Like the slaves the coloni were subject to corporal punishments.[7] If they deserted their holdings they were pursued as though they were *servi fugitivi*.[8] But above all, they were chained to the soil with indissoluble and perpetual bonds.[9] They were "slaves of the land on which

[1] *Cod. Just.*, xi, 50, 1.

[2] *Cod. Just.*, xi, 50, 2.

[3] *Cod. Theod.*, iv, 23, 1.

[4] *Cod. Just.*, xi, 48, 20, *pr.*

[5] *Cod. Just.*, xi, 50, 2, "...his, quibus annuis functionibus et debito condicionis obnoxii sunt, paene est ut quadam servitute dediti videantur."

[6] *Cod. Just.*, xi, 48, 21. "Quae etenim differentia inter servos et adscripticios intellegetur, cum uterque in domini sui positus est potestate?"

[7] *Cod. Theod.*, xvi, 5, 52, 4; xvi, 5, 54, 8. Justinian decreed that the chastisement of the coloni be moderate. *Cod. Just.*, xi, 48, 24, "...talem hominem (colonum) castigatione moderata corrigere."

[8] *Cod. Theod.*, v, 17, 1.

[9] *Cod. Just.*, xi, 51, 1. "...colonos quodam aeternitatis iure detineat, ita ut illis non liceat ex his locis quorum fructu relevantur abscedere nec ea deserere."

they were born." [1] "We decree that they are attached so completely to the soil," said the Emperors Honorius and Theodosius II, "that they must not be removed for a single instant." [2]

The Codes contained numerous constitutions regarding the flight of the coloni. The matter was held to be so important that the governors of the provinces were made responsible to see that the coloni were returned, not to their masters, but "to their homes where they are inscribed in the census and where they were born and brought up." [3] If the runaway colonus was captured he was put in chains and severely punished,[4] and possibly reduced to slavery.[5] In the time of Constantine the landlord who received the fugitive colonus was compelled to return him to his rightful owners and in addition pay his back taxes.[6] Later fines were levied on proprietors harboring refugee coloni which increased in severity in the course of time. In 386 A. D. the fine was a half pound of gold for receiving a runaway colonus from a private estate and a pound of gold for receiving a colonus from an imperial domain.[7] During the reign of Arcadius

[1] *Cod. Just.*, xi, 52, 1. "... servi tamen terrae ipsius cui nati sunt."

[2] *Cod. Just.*, xi, 48, 15. "... quos ita glebis inhaerere praecipimus, ut ne puncto quidem temporis debeant amoveri."

[3] *Cod. Just.*, xi, 48, 6. "Omnes omnino fugitivos adscripticios colonos vel inquilinos sine ullo sexus muneris condicionisque discrimine ad antiquos penates, ubi censiti atque educati natique sunt, provinciis praesidentes redire compellant."

[4] *Cod. Just.*, xi, 53, 1. "... revocati vinculis poenisque subdantur."

[5] This is not stated in the Codes. But in the *interpretatio* to the edict of Constantine of 332 (*Cod. Theod.*, v, 17, 1) it says, "Ipse vero (colonus) qui noluit esse quod natus est, in servitium redigatur." The *interpretatio* to the Theodosian Code was prepared about seventy years after the publication of the Code in 438 (Fustel de Coulanges, *op. cit.*, p. 103) and consequently nearly two centuries after the edict of Constantine, when the punishment for flight of the coloni had become more severe and the difference between slaves and coloni very slight.

[6] *Cod. Theod.*, v, 17, 1.

[7] *Cod. Theod.*, v, 17, 2.

and Honorius (395-408) the landlord who kept a fugitive colonus on his estate was compelled to pay a fine to the Treasury of twelve pounds of silver, while, in addition, he was required to give a colonus of equal value to the former landlord of the colonus besides restoring the fugitive to him.[1] During the same reign the fine was two pounds of gold for receiving a runaway colonus in Thrace.[2] In the next century, when patronage developed in the Roman Empire and coloni who were discontented with their landlords found a refuge by escaping to powerful patrons, fines as high as one hundred pounds of gold were levied against those who could pay such a sum, while those who could not were punished with the complete confiscation of their property.[3]

But if the colonus was not allowed to leave the estate to which he had been attached, no more could his landlord separate him from his plot of land. In case an estate was sold the coloni and agricultural slaves went with it.[4] The sale of an estate without the coloni was of no effect.[5] A purchaser of an estate was not allowed to bring in new coloni to replace those already cultivating the land nor could he use slaves for this purpose.[6]

Thus the colonus is revealed by the Codes as a small tenant whose most noticeable characteristic was his legal attachment to the soil. He cultivated his own land and received the product of his fields[7] which he marketed himself.[8] As a payment for the use of the land he owed a yearly rental

[1] *Cod. Just.*, xi, 48, 12.
[2] *Cod. Just.*, xi, 52, 1.
[3] *Cod. Just.*, xi, 54, 1 (468 A. D.).
[4] *Cod. Just.*, xi, 48, 7.
[5] *Cod. Just.*, xi, 48, 2.
[6] *Cod. Just.*, xi, 63, 3.
[7] *Cod. Just.*, xi, 51, 1. "... quorum fructu relevantur."
[8] *Cod. Theod.*, xiii, 1, 3; 8; 10.

to the landlord which was usually called *reditus*.[1] The nature and amount of the rent was fixed by custom. The rent was ordinarily paid in kind unless a money payment had become customary.[2] Likewise the amount of the rent was fixed by custom [3] and the important consequence followed from this that it could not be raised. If the landlord attempted to force the coloni to increase their payments the rights of the coloni to the customary rent could be defended in the courts.[4] In the words of a rescript of Justinian:

Let the proprietors take care that they inflict no innovation nor violence upon the coloni. For if the proprietors are guilty of any such action, the moderator of the province himself shall take complete charge of the matter; and he shall see that the coloni are recompensed for any injury which they have received, and that the old customary rent is observed. This law applies not only to the actual coloni but to their posterity of whatever age or sex; and we decree that the offspring of the coloni once born on the estate shall always remain in possession under exactly the same conditions which we have defined for their ancestors on the estates of others.[5]

Whether the coloni owed customary work on the landlord's estate in addition to their rent is unfortunately one of the questions concerning which we have almost no infor-

[1] *Cod. Just.*, xi, 48, 20, *passim*; xi, 48, 23, 2; *Cod. Theod.*, x, 1, 11.

[2] *Cod. Just.*, xi, 48, 5.

[3] *Cod. Just.*, xi, 48, 20, 1.

[4] *Cod. Just.*, xi, 50, 1 and 2.

[5] *Cod. Just.*, xi, 48, 23, 2. "Caveant autem possessionum domini... aliquam innovationem vel violentiam eis inferre. Si enim... aliquid tale fuerit perpetratum, ipse provinciae moderator omnimodo provideat et laesionem, si qua subsecuta est, eis resarcire et veterem consuetudinem in reditibus praestandis eis observare... et hoc tam in ipsis colonis quam in subole eorum qualiscumque sexus vel aetatis sancimus, ut et ipsa semel in fundo nata remaneat in possessione sub isdem modis isdemque condicionibus, sub quibus etiam genitores eius manere in alienis fundis definivimus."

mation. Services of the coloni (*operae*) are mentioned only once in the Codes. A constitution of Valentinian I, Valens, and Gratian of 371 said that a proprietor who had received a fugitive colonus on his land owed the original landlord of the colonus among other things compensation for the services of the colonus and for the loss which his absence entailed on his home estate.[1] It seems somewhat hazardous to infer from this one passage that the coloni were accustomed to furnish services to their landlords. Yet African inscriptions of the second century show that the tenants on the great African domains were required to work from six to twelve days a year on the demesne land,[2] while peasants on municipal lands were held accountable for certain annual hand and team services;[3] and the *polyptyques* drawn up under Charlemagne show that the coloni as well as the serfs owed services on the demesne.[4]

Besides their payments to the proprietor the coloni owed taxes and services to the state. Their principal fiscal obligation was the payment of the poll tax[5] (*capitatio humana* or *plebeia*). It was on this account that they were inscribed in the census and were commonly designated in the Codes as *tributarii, censiti, adscripticii,* and *censibus adscripti.*[6] The tax applied only to able-bodied coloni working on the estate, as children and old people were exempt,[7] and women were assessed at a lower rate than men, some-

[1] *Cod. Just.*, xi, 53, 1, 1. "... maneatque eos poena, qui alienum et incognitum recipiendum esse duxerint, tam in *redhibitione operarum* et damni, quod locis, quae deseruerant factum est..."

[2] *Cf. infra*, pp. 139-140, 143.

[3] *Cf.* the *lex coloniae Genitivae* in Mommsen, "Decret des Commodus," *Hermes*, vol. xv, p. 406. *Éphém. épigraph.*, vol. ii, p. 110.

[4] For references see Fustel de Coulanges *op. cit.*, pp. 179-183.

[5] *Cod. Just.*, xi, 48, 4; xi, 48, 23, *pr.*; xi, 55, 1.

[6] *Cf.* Savigny, *op. cit.*, pp. 33-34 for references.

[7] *Cod. Theod.*, xiii, 10, 4 and 6; *Dig.*, L, 15, 3; Lactantius, *De Mort. Persecut.*, 23.

times at one-half and sometimes three-fourths.[1] Coloni who had been drafted into the army received immunity from the poll tax not only for themselves but after a certain period of services for their wives as well.[2] The tax was ordinarily advanced by the landlord [3] who could himself recover it from the colonus, unless the custom of the estate prescribed that the colonus pay the tax directly.[4] In addition to the poll tax the coloni were obligated to the government for certain annual services called *sordida munera, publicae functiones,* or *annuae functiones.*[5] These included a varied assortment of duties such as carrying services with wagons and oxen or packhorses on the public roads; the preparation of flour, the making of bread, and services in the bakehouse; the supply of building materials, the construction and repair of public and sacred buildings; the maintenance of roads and bridges, etc.[6]

There were four ways in which a person might become a colonus, by birth, by prescription, by voluntary agreement, or by special governmental constraint. The ordinary source of the supply of coloni was birth. From this the names *originarii, originales,* and *coloni originarii* were derived, which were very common designations of the coloni in the Codes.[7] If both parents were coloni the children continued "to belong to the land which once their fathers undertook to cultivate." [8] Even if the son of a colonus had entered the

[1] *Cod. Just.*, xi, 48, 10.

[2] *Cod. Theod.*, vii, 13, 6.

[3] *Cod. Theod.*, xi, 1, 14 and 26; *Cod. Just.*, xi, 48, 4; xi, 48, 20, 5.

[4] *Cod. Just.*, xi, 48, 20, 5.

[5] *Cod. Theod.*, xi, 16, 18; *Cod. Just.*, xi, 48, 20, 5; xi, 48, 23, 5; xi, 50, 2.

[6] *Cod. Theod.*, xi, 16, 18. *Cf.* Seebohm, *English Village Community* (London, 1905), pp. 296-299.

[7] *Cf. Cod. Just.*, xi, 48, 4; 7; 11; xi, 68, 1; *Cod. Theod.*, v, 18, 1; *et passim.*

[8] *Cod. Just.*, xi, 48, 23, 1. "... terrae inhaereant, quam semel colendam patres eorum susceperunt."

army at an early age (*parvulus*)[1] or had been absent from the estate for forty years or more,[2] he could still be recalled by the landlord on the occasion of the death or incapacity of his father.

Marriages between coloni on the same estate were the only ones not frowned upon by the proprietors and the state. But frequently children were born of parents not of the same legal status and it was necessary for the legislator to determine their condition. The offspring of the union of a slave and a colonus were held to be slaves or coloni according to the status of their mother.[3] If the father were a freeman and the mother a *colona,* the children, following the same law, became coloni.[4] The opposite case, however, when the father was a colonus and the mother free, caused the legislators some difficulty as there was a conflict between the law of the *contubernia,* in which the child followed the condition of its mother, and economic necessity of keeping a sufficient number of cultivators on the estates. Consequently the law underwent several changes. Before Justinian the child of such a marriage became a colonus like his father.[5] Justinian, however, wishing to revive the old law, declared that the child should follow the condition of its mother and become free; but he gave the landlord of the colonus the right of compelling his tenant to separate from his wife.[6] Later Justinian attempted to prevent such unions altogether,[7] but, failing in this, he returned to the policy of his predecessors and declared that the child, although free,

[1] *Cod. Just.*, xi, 64, 11.

[2] *Cod. Just.*, xi, 48, 22, 3.

[3] *Cod. Just.*, xi, 48, 21, 1. "... matris suae ventrem sequatur et talis sit condicionis, qualis et genetrix fuit, sive ancilla sive adscripticia."

[4] *Cod. Theod.*, v, 18, 1, 4.

[5] *Nov.*, 54, *pr.*

[6] *Cod. Just.*, xi, 48, 24.

[7] *Nov.*, 22, 17.

should be attached in perpetuity to the estate which his father cultivated as a colonus.[1]

A second way in which a man might become a colonus was by prescription. If a peasant lived on the same estate as a tenant for thirty years, at the end of that period he became a colonus.[2] He obtained hereditary rights over his tenement but at the same time he was legally attached to the soil. However, he was free to leave the estate at any time before the expiration of the prescription period; and apparently the colonate was considered a desirable condition in certain districts for this law states that entrance into the colonate was as advantageous to the landlord as to the peasants.[3] The children of free tenants who entered the colonate by prescription likewise became coloni.[4]

It was possible, indeed, to become a colonus voluntarily without waiting the thirty-year period of prescription. It was ordained by Valentinian III that a stranger (*advena*) might enter the colonate by marrying a *colona* and by declaring in court his desire to become a colonus.[5] Also a constitution of Justinian, evidently drawn up to prevent persons from being brought into the colonate by force, decreed that two proofs were necessary to signify desire to enter the colonate, a declaration in court and a personal statement in which the applicant was required to state his desire to become a colonus without being "constrained by

[1] *Nov.*, 162, 2. Likewise the children born from the marriage of coloni of different estates were the cause of considerable difficulty to the legislators. After several changes the law finally declared that the children of such unions should be divided equally between the two estates, and if there should be an uneven number of children the odd child should go to the landlord of the mother. (*Nov.*, 156, 1; 162, 3.)

[2] *Cod. Just.*, xi, 48, 19.

[3] *Ibid.* "...hoc autem tam domino quam agricolis expedit."

[4] *Cod. Just.*, xi, 48, 23.

[5] *Nov. Val.*, xxx, 1, 5 and 6.

force or necessity." [1] And in the troubled times of the late Empire, Salvian, although he admitted that the colonate was an "abject yoke," [2] virtually advised small proprietors to give up their lands, heavily overburdened with taxes, and become coloni of the rich.[3]

Finally, persons might be brought into the colonate through special governmental constraint. A law of Gratian, Valentinian II, and Theodosius I of 382 declared that beggars and vagabonds who were young and able-bodied should become the perpetual coloni of proprietors who informed against them; [4] and in 409 a constitution of Honorius and Theodosius II provided that a whole barbarian tribe should be distributed among various proprietors as coloni.[5]

Was it possible for a man once a colonus to be freed from that condition? A slave could be manumitted by the will of his master, but we have record of no law which gave a landlord the right to free his colonus. "No personal exceptions, no official decision, no authority of the census can free coloni by birth from their obligations," declared a rescript of Arcadius and Honorius.[6] According to a law of Justinian, "a lord is able to free a slave with his *peculium,*

[1] *Cod. Just.*, xi, 48, 22, 2. "Sin autem et scriptura et post scripturam confessio seu depositio, sine vi et necessitate tamen, intervenerit... tunc ex utroque genere obligationis, id est tam scripturae quam confessionis vel depositionis, talem eum esse credendum, qualem et scripsit et inter acta deposuit."

[2] Salvianus, *De Gubernat. Dei*, v, 8, 44. "... jugo inquilinae abjectionis."

[3] *Ibid.*, v, 8, 43. "Itaque nonnulli eorum de quibus loquimur qui aut consultiores sunt aut quos consultos necessitas fecit... fundos maiorum expetunt et coloni divitum fiunt."

[4] *Cod. Theod.*, xiv, 18, 1; *Cod. Just.*, xi, 26, 1.

[5] *Cod. Theod.*, v, 6, 3. *Cf. infra*, pp. 34-35.

[6] *Cod. Just.*, xi, 48, 11. "Originarios colonos nullis privilegiis, nulla dignitate, nulla census auctoritate excusari praecipimus."

and expel a colonus from his control *with the land.*" [1] This evidently implied, as Savigny has said,[2] that a landlord could not expel his colonus except with the plot of land which he was accustomed to cultivate. It was possible, indeed, in the fifth century for coloni to be freed by prescription of thirty or forty years from the obligations of one estate by becoming coloni in another,[3] or by becoming subject to the obligations of municipal *collegia*.[4] But this was abolished by Justinian who decreed that no period of prescription was sufficient to free a colonus from his native estate.[5] In fact under Justinian the only method by which a man born in the colonate could free himself was to become a priest, after he had furnished a substitute to occupy his tenement,[6] and then to rise to the rank of bishop,[7] a circumstance which of course must have been exceedingly rare.

Thus the Codes are able to present a fairly adequate picture of the coloni of the late Empire. They were tenants on the estates either of the great proprietors or of the crown who, although legally freemen, were attached in perpetual bonds to the soil. It was a condition so utterly dissimilar to the coloni as described in the Digest by the great jurists of the second and third centuries that scholars in the fields of Roman law and ancient history from the time of Cujacius and Gothofredus have felt it necessary to offer some explanation of the origin of the coloni of the Codes. Our next task, therefore, is to examine the theories of the colonate presented by these writers.

[1] *Cod. Just.*, xi, 48, 21, 1. "... et possit (dominus) servum cum peculio manumittere et adscripticium cum terra suo dominio expellere."

[2] Savigny, *op. cit.*, pp. 35-36.

[3] *Cod. Theod.*, v, 18, 1; *Nov. Val.*, 26, 4 and 6; 30, *pr.*

[4] *Cod. Theod.*, xii, 19, 2.

[5] *Cod. Just.*, xi, 48, 23, 3; 4; 5.

[6] *Cod. Just.*, i, 3, 16; *Nov.*, 123, 17.

[7] *Nov.*, 123, 4.

CHAPTER II

Early Theories

The first explanation of the origin of the colonate appeared in the works of the early Latin commentators on Roman law, Cujacius and Jacobus Gothofredus. In 1577, Cujacius, in his commentary on the Digest of Justinian, found it necessary to explain the meaning of the word *inquilinus* as it was used in the passage, "if anyone has bequeathed *inquilini* without the estates to which they are united, the bequest is null and void."[1] The *inquilini,* Cujacius explained, were peasants united forever to their estates together with their children.[2] An hereditary class of serf-peasants, he maintained, existed in Italy from early times to late, but under different names. They were known as *operarii* (laborers) during the Republic, as *inquilini* or *coloni* at the time of the jurists of the Digest and of the earlier constitutions of the Codes, and as *adscripticii,* those inscribed in the register of an estate, in the later laws of the Codes. The serf-colonate of the Codes in the opinion of Cujacius, therefore, was not a new condition peculiar to the late Empire, but one which had always existed in Italy.

Gothofredus, on the other hand, in his commentary on the Theodosian Code in 1665, traced the origin of the colonate to the barbarian *dedititii* who surrendered themselves to the Romans and who were set to the work of cultivating

[1] *Dig.*, xxx, 1, 112, *pr.* "Si quis inquilinos, sine praediis quibus adhaerent, legaverit: inutile est legatum."

[2] Cujacius, *Opera* (edition of Paris, 1658), vol. iv, part i, p. 1145. "Hi (inquilini) praediis perpetuo adhaerebant cum progenie sua."

land within the Empire "under the fixed laws of the census and the capitation tax." [1] He derived his theory from the use of the expression "*dediti*" in a passage of the Justinian Code, "paene est ut (coloni) quadam servitute *dediti* videantur," [2] and these coloni "who seem to have surrendered themselves in a kind of servitude," he identified with the many known cases of barbarian *dedititii*.

The first comprehensive treatment of the colonate as a legal and economic institution was undertaken by Savigny in his essay, *Ueber den Römischen Colonat,* in 1822.[3] After an exposition of the legal status of the colonus as revealed by the constitutions of the Codes, which has never since been surpassed, Savigny proceeded to discuss the various ways the colonate may have arisen. The opinion of Gothofredus, that the colonate grew out of the custom of receiving conquered barbarians in the Empire as *dedititii*, Savigny cast aside as untenable; for he believed that there was no evidence extant which would warrant identifying the serf-coloni of the Codes with the barbarian *dedititii*.[4] Neither did Savigny hold that the conjecture of Cujacius was more acceptable, that *colonus* was merely another designation for the earlier servile *operarius;* for again evidence is completely lacking to show that the *operarius* was an hereditary serf.[5] Two types of earlier semi-servile relationships, considerably more like the colonate than the *operarii* of the Republic,

[1] Gothofredus, *Codex Theodosianus cum Perpetuis Commentariis,* v, 9, 1 (edition of Lyons, 1665), vol. i, p. 455. "Mens ea mihi colonos ... fuisse 'dedititios' ... qui scilicet cum sese ex barbaris nationibus dededissent, alienis fundis colendis operam suam addixerant sub certa census et capitationis lege."

[2] *Cod. Just.,* xi, 50, 2.

[3] *Abhandlungen der historisch-philologischen Klasse der königlichen Akademie der Wissenschaften zu Berlin,* 1822, pp. 1-26.

[4] *Ibid.,* p. 24.

[5] *Ibid.,* p. 22.

were the ancient Roman clients and the German tenant-slaves described by Tacitus.[1] But while there was a certain degree of general resemblance (*allgemeine Aehnlichkeit*) between these earlier institutions and the late Roman colonate, Savigny failed to see any historical connection between them.[2]

There were, however, in Savigny's opinion, two possible ways in which the colonate might have originated. Freemen, oppressed by taxation and poverty, may have entered the colonate of their own volition; or coloni may have been recruited from slaves by a limited manumission. Yet, Savigny saw such cogent objections to the acceptance of either of these explanations that he hesitated to advocate the one or the other as a well-grounded theory. The only definite historical text in regard to the entrance into the colonate, which was known at the time Savigny wrote his essay, seemed to favor the first hypothesis. Salvian, writing in the fifth century after Christ, complained that small landholders were so burdened with the taxes that they found it preferable to give up their land altogether and become coloni of the rich.[3] Whether this was a common practice affecting a whole class of the population and not merely isolated individuals Savigny felt that it was impossible to

[1] *Ibid.*, pp. 22, 25. Tacitus described these tenant-slaves as follows: "Their other slaves they do not employ in our fashion as an organized staff of domestics. Each has a lodging and home of his own. The lord requires of him a share of grain, or of live stock, or of clothing, as from a tenant (*colonus*); but the slave renders no service beyond this."

Germania 25. "Ceteris servis, non in nostrum morem descriptis per familiam ministeriis, utuntur. Suam quisque sedem, suos penatos regit. Frumenti modum dominus, aut pecoris, aut vestis, ut colono, injungit: et servus hactenus paret."

[2] Savigny, *op. cit.*, p. 25. "... aber eine historische Verbindung zwischen denselben anzunehmen, scheint mir durchaus kein Grund vorhanden."

[3] *Ibid.*, p. 23. *Cf.* Salvian., *De Gubernatione Dei*, v, 8, 43. "... fundos majorum expetunt et coloni divitum fiunt."

decide from the evidence of this one reference. The Justinian Code indicated that entrance into the colonate by freemen, while permitted, was considerably limited,[1] and voluntary entrance into a dependent condition was certainly contrary to the general principles of the earlier Roman law.

The other possible explanation of the origin of the colonate, according to Savigny, was to trace the condition of the coloni to a manumission of slaves, which was limited in such a way that while the slave was allowed personal freedom he was at the same time bound forever to the soil. The fact that the landlord of the colonus and the master of the slave were both spoken of as *patronus* lent a certain degree of support to this view. Yet the limited manumission of a slave was as contrary to the fixed principles of Roman law as the voluntary entrance of a freeman into a semi-servile status. Lacking the evidence of any statutory enactment, Savigny believed that neither hypothesis could be definitely maintained.[2]

Not long after the publication of Savigny's treatise, two important documents of antiquity were discovered, both of which contained precious information in regard to the colonate. The first of these finds was the *Constitutio de Scyris* discovered in 1824. It was a decree of the Emperors Honorius and Theodosius II of the year 409 A. D., regulating the settlement of a barbarian tribe, the Scyrae, on Roman land. The edict reads as follows:

> We have subjugated the Scyrae, a barbarian tribe of the Huns. Wherefore we grant to all (proprietors) the opportunity of stocking their fields with men from the above mentioned tribe, so that all may know that these barbarians are to be incorporated on their estates (*apud se*) in no other legal condition than that of the colonate. When once the coloni have been assigned

[1] *Cf. supra*, pp. 28-29.

[2] Savigny, *op. cit.*, p. 24.

to any proprietor no one will be permitted to coax any one (of them) away fraudulently (from his estate), nor to receive a fugitive, under the (same) penalties which have been prescribed in regard to those receiving coloni inscribed in the census of other districts, or (in receiving) any coloni not their own. Moreover the landlords are to employ them (the Scyrae) only in the work of free men. No one will be permitted to make slaves of them or to set them at work in cities. On account of the scarcity of grain, it will be permitted to keep them in the Transmarine provinces and to attach them to estates forever. . . . The furnishing of recruits also will be remitted for twenty years.[1]

This law was introduced into Wenck's edition of the Theodosian Code, with the comment[2] that the whole class of coloni originated by barbarians being settled in Roman territory in this fashion, a theory which renewed on a more substantial foundation the hypothesis originally set forth by Gothofredus.

The other important find was the discovery of an edict of a prefect of Egypt, Tiberius Julius Alexander, in 68 A. D., which was published along with a commentary by Rudorff in 1828.[3] The edict was an answer to complaints which the property holders of Alexandria had made against

[1] *Cod. Theod.*, v, 6(4), 3. "Scyras, barbaram nationem . . . (Hun)norum . . . subegimus. Ideoque damus omnibus copiam ex praedicto genere hominum agros proprios frequentandi, ita ut omnes (scia)nt *susceptos non alio iure quam colonatus* apud se futu(ros): nullique licere *ex hoc genere colonorum* ab eo cui semel adtributi fuerint, vel fraude aliquem abducere vel fugientem suscipere, poena proposita, quae recipientes alienis censibus adscribtos vel non proprios colonos in(seq)uitur. Opera autem eorum terrarum domini libera (utantur): . . . ac nulli liceat . . . eos . . . (in se)rvitutum trahere urbanisve obsequiis addicere. Licet . . . pro rei frumen(tari)ae angustiis in provinciis transmarinis . . . eos retinere et postea in sedes perpetuas (conl)ocare . . . Iuniorum quoque intra . . . viginti an(nos p)raebitione cessante . . ."

[2] Book v, title 4, constitution 3, p. 286, note x.

[3] *Rheinische Museum für Philologie*, ii (1828), pp. 64-84; 133-190.

certain illegal exactions of the provincial government of Egypt under Nero; and Tiberius Julius Alexander, the prefect of the Emperor Galba, promised a rectification of their wrongs. "For it is unjust," he said, "that those who have purchased property and paid the price for it, should be required to pay rents in kind (ἐκφόρια) for their own estates like state peasants (δημόσιοι γεωργοί).[1]

Who were these state peasants? Rudorff believed that they were a dependent class in the same economic condition as the hereditary tenantry (γεωργοί) mentioned by Herodotus and Diodorus in their descriptions of ancient Egypt and of which some traces are to be found in the Egypt of the Ptolemies.[2] Also he held that their condition was similar to that of the late Roman coloni, who existed in Egypt as in other parts of the Empire. This similarity led him to suggest the hypothesis that there was a continuous historical development from the γεωργοὶ of Herodotus to the coloni of the late Roman Empire; that this development in Egypt was typical of the development in other lands; and that the coloni of the late Empire stood in an historical connection (*in geschictlichem Zusammenhange*) with earlier servile tenures.[3]

In support of his thesis Rudorff called attention to a passage of Varro's *Rerum Rusticarum* which dealt with the *operarii,* whom Cujacius had already described as the servile predecessors of the coloni. "All fields," said Varro, in the first century B. C., "are cultivated by slaves or freemen or both. Among the freemen are those who cultivate the lands themselves, paid laborers, and those whom our ancestors called *operarii,* many of whom even now are to

[1] *Ibid.*, p. 149. Ll. 31-32. "ἄδικον γάρ ἐστι τοὺς ὠνησαμένους κτήματα καὶ τιμὰς ἀντὶ αὐτῶν ἀποδόντας ὡς δημοσίους γεωργοὺς ἐκφόρια ἀπαιτεῖσθαι τῶν ἰδίων ἐδαφῶν."

[2] Rudorff, *op. cit.*, p. 179.

[3] Rudorff, *loc. cit.*

be found in Asia, *Egypt*, and Illyria."[1] The *operarii* in Egypt, Rudorff believed, were identical to the semi-servile γεωργοί. Thus, he said, these Egyptian peasants may have formed the original sources of the colonate, in relation to which the other sources of coloni were but "secondary imitations" (*secundäre Nachbildungen*).[2]

In the second edition of his essay on the colonate, which appeared in 1828,[3] Savigny took into account the theories of Rudorff and Wenck. Rudorff's hypothesis that a semi-servile peasantry had existed in the provinces from the earliest times, Savigny regarded as the simplest and most natural way of accounting for the serf-colonate of the Codes. Yet in view of the meager historical evidence, he felt that such a theory could only be regarded "as a mere conjecture and not a positive assertion."[4] Wenck's theory of barbarian settlements, Savigny regarded as somewhat more satisfactory. The *Constitutio de Scyris* of 409 A. D. plainly stated that the tribe of Scyrae were distributed throughout the Empire as "*coloni*," and Savigny admitted that it would not be unlikely that the whole class of coloni might have originated by earlier barbarian settlements, similar to that of the Scyrae. Yet, he warned that such a conclusion did not by any means necessarily follow; for the colonate might have developed earlier from totally different

[1] Varro, *R. R.*, i, 17, 2. "Omnes agri coluntur hominibus servis aut liberis aut utrisque: liberis, aut cum ipsi colunt... aut mercenariis... iique quos operarios nostri vocitarunt, ut etiam nunc sunt in Asia, et Aegypto et in Illyrico complures." Most manuscripts have *obaerarios* or *obaeratos* (debtors) in place of *operarios* (*laborers*). *Cf.* ed. Goetz, p. 33.

[2] Rudorff, *op. cit.*, p. 179.

[3] *Zeitschrift für geschichtlichen Rechtswissenschaft*, vi, 3, pp. 273-320. Also published in his *Vermischte Schriften*, ii, pp. 1-53.

[4] *Vermischte Schriften*, ii, p. 48, "als blosse Vermuthung nicht als bestimmte Behauptung."

sources, and Honorius and Theodosius II may merely have incorporated the barbarian Scyrae into a class of society which had already long existed.[1]

In 1830 the theory of Rudorff received the powerful support of the great historian Guizot, then premier of France.[2] "I see but three ways," said Guizot, "of explaining the formation, in the heart of a society, of such a class as that of the coloni, the reduction of the agricultural population to such a state."[3] In the first place the colonate may have been the result of conquest and force. The conquered peasantry may have been bound to the soil and forced to share the products of their labor with the conquerors. Or, secondly, the agricultural population, originally free, may have gradually lost its liberty through the encroachments of a governing aristocracy; whence an "*immobilisation des colons,*" the result not of conquest and sudden violence but of government and of legislation. Finally "the existence of such a class, the condition of the coloni, may have been an ancient fact, a survival of a primitive, natural, social organization which neither conquest nor scientific oppression produced, and which maintained itself in this at least through the various destinies of the land."[4]

This last explanation appeared to Guizot as the most probable. In the Germanic tribe, the clansman enjoyed the right of cultivating the lands of the chief in return for a

[1] *Ibid.*, p. 51.

[2] *Cours d'histoire moderne* (Paris, 1829-30), vol. iv, pp. 230-251.

[3] *Ibid.*, p. 246. "Je ne vois que trois manières d'expliquer, au sein d'une société, la formation d'une classe comme cette des colons, la réduction de la population agricole à un tel état."

[4] *Ibid.*, p. 247. "L'existence d'une telle classe, la condition des colons, est un fait ancien, débris d'une organisation sociale primitive, naturelle, qui n'avaient enfantée ni la conquête, ni une oppression savante, et qui s'est maintenue, en cela du moins, à travers les destinées diverses du territoire."

share of the produce and personal service to their leader in time of war. This seems to have been the social organization of all groups which bore the name of tribe, clan, or sept; and it was a condition quite similar (*assez analogue*) to that of the Roman coloni. When the Romans conquered Gaul and other Celtic countries, they found the agricultural population in this state of semi-serfdom. After the conquest, the condition of the conquered barbarians remained very nearly the same. The chiefs, such as Vercingetorix in Caesar's *Commentaries,* had disappeared, but the Romans took their place. What the barbarian tenantry lost by way of patriotic attachment to chiefs of their own blood, they gained in the more stable order maintained by the Roman proprietors, so that, at least so far as their economic condition was concerned, they were better off by the change.[1]

Thus, then, Guizot argued, the colonate was not the sudden work of conquest nor the result of a slow transformation wrought by legislation and aristocratic encroachment; but it was an ancient institution of tribal society little changed by Roman civilization. The Germans who conquered Rome likewise had their own hereditary coloni cultivating their lands, and when the Roman power was destroyed, the condition of the peasantry continued as before in its original state through most of the Middle Ages, but little affected by the Roman influence.[2]

In 1833, C. L. F. Schultz, another convert to the theory of Rudorff, published his *Grundlegung zu einer geschichtlichen Staatswissenschaft der Römer.* In the section of his book on the coloni,[3] Schultz took Savigny severely to task for favoring, even with reservations, the theory of barbarian settlements. For even though one accepted the hypothesis

[1] *Ibid.*, pp. 248-250.

[2] *Ibid.*, pp. 250-251, 255.

[3] *Op. cit.*, pp. 339-353, 445-452.

that previous barbarian settlements were made in a way similar to the settlement of the Scyrae in 409 A. D., it would be ridiculous, Schultz said, to suppose that the coloni, by far the most numerous class in a population of an empire of fifty million, could have originated from the relatively few barbarians who were settled within its borders as serfs instead of slaves. Yet the picture presented by the texts in regard to the coloni previous to the time of the Codes was a puzzling one, he admitted. In Italy, in the vicinity of Rome at least, the coloni were Roman citizens and free tenants until comparatively late times. The evidence from Pliny, Columella, and the jurists of the Digest permits no other conclusion. But Tacitus, when in the *Germania*[1] he compared the German serf to the Roman colonus, must have been thinking of an individual in a considerably lower economic and legal condition. How could this paradox be explained?

Both in Italy and the provinces, dependent agricultural relationships went back to very early times, Schultz believed. In the early Republic the client of the patrician occupied a position of distinct hereditary dependence in relation to his patron.[2] He was most frequently a freedman, and his manumission entailed a number of obligations to his former master. In case he was assigned to work on his patron's land he became a colonus, occupying his tenure in a semi-servile condition, bound with his children forever to his patron's estate. The early Roman colonists in the Italian colonies were in an analogous condition of dependence;[3] and all the peoples whom Rome conquered became *peregrini* from the earliest times, and held a dependent legal

[1] Ch. 25. *Cf. supra*, p. 33.

[2] Schultz, *op. cit.*, pp. 340-341.

[3] *Ibid.*, pp. 342, 352.

condition in relation to Roman citizens and a dependent economic condition in relation to the *ager publicus*.[1]

In Italy, at least in the districts close to the capital, the client-coloni and the hereditary tenantry disappeared. The coloni of Columella, Pliny, and the Digest held short-term leases and were undoubtedly absolutely free. But the older status of dependent agricultural relationship was retained in the provinces.[2] In many of these there was a continuous historical development of semi-servile tenures from the earliest times to the colonate of the Codes, as Rudorff had supposed in the case of Egypt. Thus the colonate was not a newly developed institution of the late Empire, but was directly connected with the servile tenures of the earliest times, through the dependent relationships of the *peregrini* in the provinces.[3]

Diametrically opposed to the explanation of Schultz was the theory of Laboulaye, which next appeared.[4] The colonate of the Codes was not related to ancient conditions of serfdom nor the result of a single cause, he held, but was the outcome of two factors working together, both of which were intimately connected with contemporaneous social and economic conditions. In the late Empire the growing depopulation of the realm and the steady increase of waste and deserted land was the cause of grave concern to Roman statesmen; and both of these maladies vitally affected the imperial treasury. To check the first evil, slaves were given plots of land to which they were attached forever and encouraged to marry and have children; while to restore the *agri deserti* to cultivation, conquered barbarians

[1] *Ibid.*, pp. 445-446.

[2] *Ibid.*, p. 446.

[3] *Ibid.*, p. 451.

[4] *Histoire du droit de propriété foncière en occident* (Paris, 1839), pp. 115-119.

were transplanted within the realm by emperors such as Claudius II, Constantius Chlorus, and Constantine. The barbarian captives were settled as coloni, as was definitely stated by the *Constitutio de Scyris* of 409 B. C.; and from an amalgamation of these two elements arose the colonate of the late Empire.[1]

The next writer, Dureau de la Malle, whose *Economie politique des Romains* appeared in 1840, returned to the theory of early servile tenures. Rudorff had called attention to the Egyptian semi-servile γεωργός, Guizot had based his theory on the Celtic tribesman, while Schultz had found a relation between the colonus and the Italian client and provincial *peregrinus*. Dureau de la Malle, on the other hand, found the germ of the Roman colonate in conditions which existed in Greece and her colonies.[2] The sacred slaves (ἱερόδουλοι) who were attached to the service of the temples, such as the *Venerii* of Eryx in Sicily, the Daughters of Aphrodite in Corinth, and the hierodules of Camarca in the Pontus, differed from ordinary slaves in their absolute adscription to the temples. They could not be sold nor alienated in any way from the service of the temples by the priests, their masters. Similar to the sacred slaves were the Helots of Sparta, the Penestes of Thessaly, the Minoans of Crete, and the serfs of other Greek states. They owed certain fixed services and rents in kind to their lords, and could not be enfranchised nor sold out of the country.[3] And Dureau de la Malle held that it was in these early Greek servile tenures that the origin of both the Roman colonate and medieval serfdom was to be found.[4]

[1] *Ibid.*, pp. 116-117.

[2] *Op. cit.*, vol. i, p. 144.

[3] *Cf.* Strabo, viii, 5, 4; xii, 3, 4.

[4] *Loc. cit.*

In the first edition of his essay, *Ueber den Römischen Colonat,* Savigny had admitted two possible ways in which the colonate might have originated, voluntary entrance into that condition by freemen, and a limited manumission of slaves. Yet lacking any specific statutes legalizing such a transformation, he regarded either as contrary to the spirit of Roman private law, and so hesitated to advocate the one or the other. Savigny's pupil, Puchta, however, was not so cautious in advancing an opinion as his master, and in his *Cursus der Institutionen* of 1841 he upheld the second of Savigny's hypotheses. From the earliest times, he said, a distinction was made between the country slaves, the *familia rustica,* and the city slaves, the *familia urbana.*[1] What the city slave gained by way of a share in the luxury and pleasures of the capital, he lost in the uncertainty of his position; for he might be sold or used for any purpose which might strike the arbitrary fancy of his master. But the slaves of the *familia rustica* were regarded differently, at least by lords who were interested in making the most of their property. They were considered as an intrinsic part of the estate, from which they were only separated by their master in case of dire necessity. In fact, their actual condition was practically the same as that which afterwards came to be the legal condition of the colonate.[2]

To transform this actual condition into a legal one would have a double advantage. It would increase the industry and interest of the slaves in their work by removing them from the danger of arbitrary mistreatment on the part of their masters, and at the same time it would insure the proprietors an increased income from their estates. But Puchta saw, as Savigny before him, that howsoever private

[1] 10th ed. (Leipzig, 1893), vol. ii, p. 98.

[2] *Ibid.*, p. 98. "Es war factisch nahezu derselbe Zustande, der nachher im Colonat zu einem rechtlichen wurde."

landholders might have regulated the condition of their *familia rustica,* the public law upon which the colonate was established would not have been affected. "*Jus publicum quod privatorum pactis mutari non potest.*" [1] Consequently, Puchta believed that some legislator enacted a law permitting a manumission of slaves which at the same time attached the freemen in perpetuity to the estate of the master.[2] In this way a new status of society, midway between slavery and freedom, was formed, and, as it proved advantageous to the interests of agriculture, the state permitted and later encouraged freemen to join it.

A far more comprehensive treatment of the origin of the colonate was undertaken by Zumpt in his essay *Ueber die Entstehung und historische Entwickelung des Colonats* which appeared in the *Rheinisches Museum für Philologie* in 1845. "The colonate," he said, "was a kind of serfdom created with the view of insuring a better cultivation of the land." [3] From the time of the Gracchi the *agri deserti* had proved a more and more serious problem to the Roman government. During the period of foreign conquests, captives, imported by the thousands, were used as slaves on the *latifundia* of the rich. But after the conquests of Caesar there were no more important additions of slaves, and the stretches of deserted land constantly increased. The government, whose revenue was almost entirely derived from the land tax, found its income seriously impaired. The most effective and enduring means which it found to cope with the grow-

[1] Savigny, *Vermischte Schriften,* ii, p. 60.

[2] Puchta, *op. cit.,* p. 98. "Daher gestattete ein Gesetzgeber, Sclaven so freizulassen dass sie von dem Gut abhängig blieben, mit einem Wort Colonen wurden."

[3] *Op. cit.,* p. 2. "Der Colonat war eine Art von Hörigkeit, geschaffen ... in der Absicht, um einen besseren Anbau des Landes zu veranlassen."

ing evil was the adscription of the peasantry to the soil and the forced cultivation of the land—in short the colonate.[1]

There were, in the opinion of Zumpt, two ways in which this important institution of the late Empire could have arisen. The colonate was either a natural development from Roman sources which finally was made fixed and permanent by law; or it was an artificial outgrowth from foreign sources. If the colonate was of native birth, it must either have arisen from a depression in the status of the freeman or else a rise in the status of the slave. There are some passages in Varro and the younger Pliny which might lead to the acceptance of the former view. "All the fields," said Varro in an often quoted passage, "are cultivated by slaves or freemen or both. . . . Among the freemen are those whom our ancestors called debtors (*obaerati*) and of whom there are a number even now in Asia, Egypt, and Illyria." [2] But Zumpt maintained that this passage of the first century B. C. indicated that the class of *obaerati* were dying out in Italy even at that time and only existed in some of the provinces, so this indebted class could not have been numerous enough to have been the source of the colonate.[3]

In one of the letters of Pliny the Younger [4] mention was made of coloni who had fallen in arrears and who had been fitted out with cattle and tools by the landlord. Such debtor tenants may have been bound to the estate until they paid their debts. Yet there was a very great difference between these debtor tenants and the later coloni, for the debtors' children were undoubtedly free to go any place they pleased, while the colonate was an hereditary status, affecting both the coloni and their descendants forever. To change the

[1] *Ibid.*, pp. 4-6.

[2] *Cf. supra*, pp. 36-37.

[3] Zumpt, *op. cit.*, p. 7.

[4] *Epist.*, iii, 19.

free tenantry of the first century A. D. to the serf-coloni of the Codes a comprehensive general edict would have been necessary. But there is absolutely no evidence of the existence of such an edict, and it is unlikely that a law, so contrary to the general spirit of Roman jurisprudence, arbitrarily transforming the free peasant into a serf, was ever promulgated.[1]

Even less likely, Zumpt argued, was the origin of the colonate to be seen as a result of a rise in the status of the slave, as Puchta had asserted. Puchta had seen that such a change could not have arisen from a manumission limited by private agreement, for such a restricted manumission would have had no effect on the public law. He believed that the transformation had been effected by a special edict. But Zumpt protested that it was impossible that a law of such fundamental importance should have so completely disappeared that no later reference to it was ever made. Moreover the coloni were described as "free-born" (*ingenui*);[2] and it should be remembered that the slaves were far less numerous than at the beginning of the Empire.[3]

Since the colonate, then, could not be traced to native elements, Zumpt believed that it must have been artificially induced from foreign sources. The Gracchi had settled Roman citizens on the Italian *ager publicus* in the hope of reviving a sturdy peasantry which would keep the lands in cultivation and furnish the material for future legions. Sulla, Caesar, and Augustus had granted lands to their veterans for the same purpose. But none of these measures had succeeded. The population continued to decline unchecked and it eventually became necessary to enlist barbarians in the rank and file of the Roman legions. Even

[1] Zumpt, *op. cit.*, p. 8.

[2] *Cod. Just.*, xi, 52, 1. "... licet condicione videantur ingenui."

[3] Zumpt, *op. cit.*, pp. 9-11.

more serious were the consequences of the lack of man power on agriculture. The slaves and the native peasantry proved inadequate to keep the lands in cultivation and the Romans were compelled to import barbarians again, this time as cultivators in the fields.[1]

The reign of Marcus Aurelius saw the adoption of the new policy. The plague of 166 A. D. had wrought frightful gaps in the population and was followed by the severe wars with the Marcomanni. It was only with difficulty that Marcus could raise sufficient troops to defeat the barbarians, and, although victorious, he made no attempt to incorporate the conquered land in the Empire. Instead "he received the Marcomanni in surrender, very many being transported to Italy."[2] Other barbarian colonists were settled in Dacia, Pannonia, Moesia, and Germany.[3]

The policy adopted by Marcus of granting to barbarians land within the Empire, was followed by many of his successors; and Zumpt has marshaled all the references to classical authors bearing on these settlements in imposing array. Claudius II, Aurelian, Probus, Diocletian and Maximian, Constantius Chlorus, Constantine, Constantius II, Valentinian I, Gratian, Honorius and Theodosius II, all settled barbarians on land in Roman territory.[4] What was the legal condition of the barbarians after they were placed on Roman lands? They were not slaves, Zumpt argued, for they were allowed to carry on commerce with barbarians outside the Empire; and in addition they were used for troops in the legions, which would have been impossible for slaves. And yet they could not have been free to sell or

[1] *Ibid.*, p. 11.

[2] Julius Capitolinus, *M. Antoninus*, 22. "Accepitque in deditionem Marcomannos, plurimis in Italiam traductis."

[3] Dio, lxxii, 11.

[4] Zumpt, *op. cit.*, pp. 16-37.

leave their land at their own volition, for otherwise all advantage of the settlement would have been lost. When the Gepidi and Vandals wandered away from the region where they had been settled by Probus, the emperor led his troops against them and almost annihilated them. The settled barbarians were not perhaps quite in the same condition as the later colonate, for there is no reference to overlords. They were in all probability settled on the imperial domains of the emperor, where they were bound with their children in perpetuity.[1]

The accounts of these settlements from the first show that the barbarians were in a kind of servile condition. "From the Goth," said Trebellius Pollio, "the barbarian was made a soldier and a colonus, and there was no region which did not have a Gothic slave in a kind of triumphal servitude."[2] "The very places which perhaps they themselves had devastated with their depredations, they (the barbarians) were compelled to bring back to cultivation by servile labor," said Eumenius in his Panegyric to Constantius.[3] They were spoken of as *tributarii* in the settlements of Constantius[4] and Valentinian,[5] a designation which was a synonym for *coloni* in the Codes. And finally in the *Constitutio de Scyris* the law specifically stated that "they are to be in no other legal status than that of the colonate."[6]

The colonization of barbarians in the Empire formed then

[1] *Ibid.*, p. 15.

[2] Trebellius Pollio, *Claudius*, 9. "Factus miles barbarus et colonus ex Gotho; nec ulla fuit regio quae Gothum servum triumphali quodam servitio non haberet."

[3] Ch. 8. "Cogerentur (barbari) ... loca ... quae fortasse ipsi depraedando vastaverant, culta redderent serviendo." *Cf.* Zumpt, *op. cit.*, p. 20.

[4] Ammian., xix, 11, 6.

[5] Ammian., xxviii, 5, 15.

[6] *Cod. Theod.*, v, 6 (4), 3. "... non alio iure quam colonatus apud se futuros." *Cf.* Zumpt., *op. cit.*, p. 36.

the main body (*Stamm*) of the coloni. When this condition was once formed, it became possible, as the laws of the fourth century show, for free-born Romans to enter the colonate.[1] Later, in 382 A. D., all beggars that were found in Rome who were capable of work and free were forcibly added to the colonate.[2] And as time went on the increasing lack of foodstuffs (*Nahrungslosigkeit*) and the growing burden of the taxes threw the peasantry more and more in arrears, and finally resulted in forcing them all, themselves and their descendants, into the immutable status of the colonate.[3]

In 1846 two additional theories were presented, both of which attempted to trace a relationship of the colonate to earlier dependent conditions. Laferrière[4] considered that the root of the colonate was to be found in the ancient status of clientage. In early Rome the patricians and the equites held large sections of the *ager publicus* in precarious tenure. As cultivators of the lands the patricians made use of their clients, to whom they sublet small plots on a similarly precarious footing. But in the course of time the holdings of the patrician landlords gradually changed from state leases to complete ownership; and this change transformed their client-coloni from precarious tenants to perpetual coloni tied in hereditary bonds to the soil. Thus, in rural districts, there developed a condition between freedom and slavery similar to the intermediate class of freedmen in cities.[5]

The same transformation of clients to coloni was to be

[1] *Cf. Cod. Theod.*, xii, 1, 33 of 342 A. D. and *Cod. Theod.*, x, 12, 2 of 368 A. D.

[2] *Cod. Theod.*, xiv, 18, 1.

[3] Zumpt, *op. cit.*, p. 54.

[4] *Histoire du droit civil de Rome et du droit français*, vol. ii, pp. 439-447.

[5] *Ibid.*, pp. 439-440.

seen in Gaul. The clients mentioned by Caesar later were converted into coloni, as is evidenced by the Roman and Frankish Codes. Salvian, in the fifth century after Christ, described the process by which poverty-stricken freemen in his day commended themselves to rich patrons and became coloni.[1] It was precisely similar, said Laferrière, to the way poor men had become clients and coloni during the Republic. And this ancient practice reached such proportions in the late Empire that the government, fearing that the patrons would become too powerful, strove to check it by repeated legislation.[2]

A more eclectic theory was presented by Charles Giraud,[3] who attempted to combine several earlier theories into a not altogether homogeneous whole. The colonate, he said, was not "a spontaneous production, an accidental or isolated fact," but the result of a long historical evolution of the agricultural classes of Italy and Greece.[4] The Greeks differed from the early Romans in that they despised manual labor and regarded agriculture as unworthy of a freeman: while the Romans on the other hand held agriculture as an occupation to be practiced with honor by a consul or a dictator. But in the course of time two influences caused the Greek concept to prevail over that of the ancient Romans. The first was the effect of a career of conquest on the Romans themselves. With the growth of Roman territory in Italy, there developed a great concentration of wealth and property. The small proprietor almost disappeared and the

[1] Salvian, *De Gubernatione Dei*, v, 8, 43.

[2] Laferrière, *op. cit.*, pp. 441-442.

[3] *Essai sur l'histoire du droit français au moyen age* (Paris, 1846), vol. i, pp. 148-183.

[4] *Ibid.*, p. 149. "A mes yeux le colonat romain n'est point une production spontanée, un fait accidentel ou isolé; il se rattache a l'histoire plus ancienne des populations agricoles de l'Italie et de la Grèce."

land of the wealthy lords came to be cultivated by humble freemen and slaves.[1] In the second place, Rome was subjected to the direct influence of Greek customs, which took effect as soon as Rome came in contact with the Hellenic civilization of South Italy and Sicily. Among the Greeks, in addition to the freemen and slaves, there was an intermediate class which was attached in perpetuity to the soil. Such an intermediate class was also to be found in the Greek colonies of Italy and Sicily. And it was the influence of the previously existing Hellenic serfdom which caused a similar class to develop among the Romans, as soon as the land commenced to be deserted and the need for more cultivators to be felt.[2]

This class of peasants, half-free and half-servile, developed in Italy about the beginning of the Empire, Giraud maintained.[3] It was recruited both from free peasants ruined by poverty and debt, and from slaves whom the general liberal tendencies of the Augustan Age caused to be partially emancipated. In the early Empire this semi-servile status was not codified into law but was simply a matter of custom and contract. It developed rather on the great *latifundia* than in the districts close to Rome, and for that reason was not specifically treated by Cato, Varro, and Columella in their works on agriculture.[4] But the mention of the *coloni liberi* by Columella [5] seems to imply that coloni who were not *liberi* did exist. Likewise the *coloni et pastores* with which Caesar reported that Domitius Ahenobarbus had manned a whole fleet [6] could hardly have referred

[1] *Ibid.*, pp. 152-153.
[2] *Ibid.*, pp. 159-160.
[3] *Ibid.*, p. 157.
[4] *Ibid.*, p. 162.
[5] *De R. R.*, i, 7.
[6] *Bel. Civ.*, i, 34; 56.

to freemen. For, said Giraud, both the considerable numbers of the coloni and their union with the servile shepherds [1] strongly indicated their dependent condition in relation to Ahenobarbus. And finally the analogy which Tacitus drew [2] between the German serf and the colonus showed beyond question that the colonus to whom he referred was not the free tenant of Columella and the Digest, but a peasant of a much more servile character.[3]

From the time of Marcus Aurelius the colonate received numerous accretions from barbarians settled in the Empire. Yet when Diocletian became emperor, although he himself settled thousands of barbarians on the land in different parts of the realm, the stretches of *agri deserti* continued to increase with menacing regularity. In early antiquity the general serfdom of the peasantry had led to prosperity by keeping the land in cultivation. By returning to such a system it was thought that the ancient prosperity might be restored. Hence arose the legislation of Diocletian and his successors which attached all the peasantry of the Empire to the soil in perpetuity.[4] "The dominating and permanent thought in this regard was always to put the abandoned and deserted land back into cultivation. The colonate had become, by the effect of extraordinary circumstances, a question of the public order and the greatest interest of the Empire. . . . To cultivate and repopulate the fields was the first necessity of the State; everything yielded to it." [5]

[1] Caes., *op. cit.*, i, 57. "Pastores indomiti, spe libertatis excitate..."

[2] *Germ.*, 25.

[3] *Giraud, op. cit.*, p. 165.

[4] *Ibid.*, p. 170.

[5] *Ibid.*, p. 171. "La pensée dominante et permanente à cet égard fut toujours de remettre en culture la terre abandonnée et déserte... Le colonat était devenu, par l'effet de circonstances extraordinaires, une question d'ordre public, et le plus grand intérêt de l'empire... Faire cultiver, repeupler les compagnes était la première nécessité de l'état; tout s'est plié devant elle."

Prior to 1847 three types of theory had been offered as explanations of the origin of the colonate. The colonate had been related to previous servile tenures either in Italy or in the provinces; it had been associated with barbarian settlements; and it had been regarded as the outcome of a modified manumission of slaves. In 1847 a new theory was formulated simultaneously and apparently independently by Carl Hegel in Germany[1] and Wallon in France.[2] The two explanations differed considerably in detail and method of approach; but they both regarded the colonate as primarily formed of free Roman citizens, who had been bound to the soil by the Roman administration for fiscal reasons, in precisely the same way that the *decurion* (city senator) was bound to his *curia* and the craftsman to his gild.

According to Hegel the late Empire was characterized by universal poverty in economic life and thorough-going despotism in the government.[3] In order to check the process of decay which was proceeding rapidly in all parts of society, and in order to insure the continued payment of taxes, the government decreed that all classes of society should become fixed and permanent. From the *decuriones,* members of a distinguished city aristocracy, to the soldiers, city plebeians, and coloni, a general caste system was organized from which no one could escape. The *decuriones* in the cities and the landlords in the country were held responsible for certain taxes and liturgies which must be rendered to the state. These included land and capitation taxes, specified payments in produce, the furnishing of recruits for the army, and carrying services of all kinds for the court, the army,

[1] *Geschichte der Städteverfassung von Italien* (Leipzig, 1847), vol. i, pp. 84-88.

[2] *Histoire de l'esclavage dans l'antiquité* (Paris, 1847), vol. iii, pp. 262-313, *et passim.*

[3] *Op. cit.*, p. 86.

and traveling officials. The *decuriones* could in no way avoid these payments to the state. If the taxes collected were less than the assessed amount, they were forced to make up the loss out of their own property. And since the ability of the *decuriones* to pay the taxes rested upon continued cultivation of their lands, it was only right and fair that they be assured of their cultivators. Hence the law attaching the coloni to their estates.[1]

Wallon, whose *Histoire de l'esclavage dans l'antiquité* appeared in the same year, based his theory of the colonate on a suggestion which had been made some years before by Guizot. Guizot had stated that there were three possible explanations of the origin of the colonate. It was either (1) the result of conquest in which the peasantry of the conquered nation was forced to till the soil as serfs of the victors; or (2) it was derived from an agricultural population originally free but which had lost its freedom through the encroachments of the rich and the pressure of an aristocratic administration; or finally (3) it was genetically related to previous servile conditions, especially in Gaul. Guizot had selected the third alternative as the most probable origin of the colonate.[2] But Wallon felt that Gallic serfdom formed too narrow a base to be the origin of an institution which existed not only in Gaul but in every province of the Empire. "The universality of this custom evidently demands a general cause which acted uniformly everywhere," he said.[3] The first alternative he likewise regarded as unsatisfactory, for if the colonate had been established at the time Rome conquered the provinces it would have been mentioned as frequently in the laws of the

[1] *Ibid.*, p. 87.

[2] *Cf. supra*, p. 38; Wallon, *op. cit.*, vol. iii, pp. 280-281.

[3] *Ibid.*, p. 281. "L'universalité de cette coutume réclame evidemment une cause générale, qui ait agi uniformément partout."

Digest of the second and third century as it was in the Codes of the fourth and later centuries. But Guizot's second hypothesis appeared to Wallon as the true explanation of the origin of the colonate. "The colonate was derived not from conquest but from administration," he maintained.[1] In the early Republic the object of Roman administration had been to develop a numerous and brave population. But under the Empire its sole anxiety was to obtain sufficient revenue. With the proceeds from the taxes it could support a standing army and maintain a comprehensive administration. "*L'impot, voilà sa force.*"[2] In the poverty of the late Empire, however, taxes were obtained with increasing difficulty and consequently a universal immobilization of functions became necessary. The craftsman was hereditarily bound to his trade, every citizen was bound with his posterity to his college or corporation, and the member of the city *curia* was held forever in his office.[3] And in precisely the same manner and under the same influences the country peasant was attached to the soil as a serf.[4]

This administrative adscription, however, was not a sudden transformation but merely legalized a condition which had long since appeared on the land. The development of the slave-worked *latifundia* during the Republic had ruined the small peasantry of Rome, and when, at the beginning of the Empire, the supply of slaves commenced to fall short, the large landed proprietors experienced the greatest difficulty in finding sufficient labor to keep their lands in cultivation. Every means possible, legal or illegal, was utilized to obtain agricultural labor. In the time of

[1] *Ibid.*, p. 281. "Le colonat dérive non de la conquête mais de l'administration."

[2] *Ibid.*, p. 268.

[3] *Ibid.*, pp. 264-265.

[4] *Ibid.*, p. 282.

Augustus freemen were seized as slaves in an organized brigandage. Notwithstanding attempts to destroy this practice, brigandage existed everywhere, and the forcible seizure of free men (*le rapt de l'homme libre*) continued unabated.[1] In addition the poor were crushed by the tyrannical usury charged by the rich. The taxes which a corrupt administration allowed the upper classes to evade through bribery fell the more heavily on the poor. Constantly the peasants were burdened with illegal exactions and *corvées* of all kinds. The judges of the courts and even the governors of the provinces were sometimes the accomplices of the rich and sometimes the principal authors of these fraudulent impositions. The civil wars of the third century increased the misery of the poor with their devastations and the ruin which followed in their wake.[2] The invasions of the barbarians forced the peasants who had lived on the border to seek safety within the Empire as homeless fugitives. But instead of finding a refuge, they were seized as vagabonds by the rich in their heartless rapacity and settled on their estates as serfs.[3]

The Roman administration in the provinces was that of a government of conquest. The proprietors were made responsible for the taxes and allowed to take any means they pleased to squeeze out payments from the peasantry. The proprietor was in a difficult position himself, and, unless he was able to force the coloni in his estates to furnish the requisitions allotted to him, he himself was ruined and joined the pauper multitude. Sometimes the exactions proved so severe that the coloni revolted in desperation, as in the case of the rebellion of the Bagaudes in Gaul during

[1] *Ibid.*, p. 283.

[2] *Ibid.*, 285-286.

[3] *Ibid.*, pp. 293 and 298.

the reign of Diocletian, a new type of servile war against the common enemy, the treasury.[1]

The final legal adscription of the coloni, as it appeared in the Codes, took place as the result of two causes. The influence of Christianity, which had already alleviated the harsh character of slavery,[2] led the Christian emperors of the fourth century to regulate the condition of the colonus in such a way as to safeguard for him the name and principal rights of freedom.[3] Otherwise the cupidity of the proprietors might have forced the miserable peasantry into actual slavery. Secondly, the legal adscription of the colonus assured the administration of a regular payment of taxes.[4] If the coloni deserted their holdings, either the proprietor was ruined by the taxes or else the treasury suffered. Consequently the legal recognition of the colonate saved the peasantry from further encroachments on their liberty on the part of the proprietors, while at the same time it provided the administration with a permanent and reliable source of taxation.

In the same year (1847), Huschke published his *Ueber den Census und die Steuerverfassung der frühern römischen Kaiserzeit,*[5] in which he made an ingenious attempt to combine the theory of barbarian settlements with the theory of previous servile tenures. "The regular and true source of origin of the colonate,"[6] he said, were the barbarian *dedititii,* whom the Romans had settled within the Empire. The clearest text indicating this was the famous constitution

[1] *Ibid.*, p. 287. "... l'ennemi commun, le fisc."

[2] *Ibid.*, p. 313.

[3] *Ibid.*, p. 298.

[4] *Ibid.*, p. 301.

[5] *Cf.*, pp. 145-175.

[6] *Ibid.*, p. 151. "Der regelmässige und eigentliche Entstehungsgrund des Colonats."

of Honorius and Theodosius II in 409 A. D. in regard to the Scyrae.[1] But, as Zumpt had shown, this was merely the last of a long series of barbarian settlements of similar nature. The settlements of Gratian, Valentinian II, Constantius II, Constantine, and Constantius I showed that the barbarian colonate existed in the beginning of the fourth century, while the settlements of Diocletian, Maximian, Probus, and Claudius II carried it back to the middle of the third century. The colonate did not appear conspicuously in the writings of the third century jurists in the Digest for the reason that, like emphyteusis, which was similarly neglected, the colonate was a matter of provincial administration and not of civil law.[2] Yet there are certain rare references to coloni and *inquilini* in the Digest which can only be interpreted as referring to a peasantry in substantially the same economic and legal condition as the coloni of the Codes. The *inquilini* could not be bequeathed without the estates to which they were attached.[3] The proprietor of an estate must declare his *inquilini* and coloni in the census under penalty of law.[4] Coloni were mentioned as being particularly numerous on imperial estates,[5] where it was most likely the barbarian *dedititii* were settled.[6] And finally a law of Alexander Severus in 225 showed that the proprietor had as great rights over the child of a female colonus (*adscripticia*) as of a slave.[7]

[1] *Cod. Theod.*, v, 6 (4). 3. *Cf. supra*, pp. 34-35.

[2] Huschke, *op. cit.*, p. 158.

[3] *Dig.*, xxx, 1, 112, *pr.* "Si quis inquilinos sine praediis, quibus adhaerent, legaverit: inutile est legatum."

[4] *Dig.*, L, 15, 4, 8. "Si quis inquilinum vel colonum non fuerit professus, vinculis censualibus tenetur.'

[5] *Dig.*, i, 19, 3, 1; L, 6, 5, 11; L, 1, 38, 1.

[6] Huschke, *op. cit.*, p. 157.

[7] *Cod. Just.*, viii, 52, 1. "Si invito vel ignorante te partus ancillae vel adscripticiae tuae expositus sit, repetere eum non prohiberis."

Zumpt had traced the colonate as far back as the settlements of Marcus Aurelius in the latter part of the second century. But Huschke believed that the evidences of the colonate in the first century were equally convincing. Frontinus, during the reign of Domitian (81-96 A. D.), mentioned a "numerous plebeian population" which provincial magnates in Africa possessed on their estates.[1] In 69 A. D. the edict of Tiberius Julius Alexander called attention to the inferior class of δημόσιοι γεωργοὶ whom Huschke regarded as serf-coloni.[2] During the reign of Nero (54-68 A. D.) Tiberius Plautius, the legate of Moesia, settled 100,000 people from across the Danube as *tributarii*.[3] Columella in 60 A. D. spoke of estates being cultivated by citizens "held in the bonds of their debts" as well as slaves.[4] And finally Augustus himself settled numerous barbarian tribes in the Empire. Strabo said of the Vardaei that "the Romans compelled them to cultivate the land,"[5] while the Alpine Triumpilini, who were settled in Italy, were described by Pliny as a "people who are to be sold with their fields."[6] "That is," said Huschke, "they became coloni in the later sense of the word."[7]

But Huschke was not satisfied with tracing settlements of *dedititii* to the beginnings of the Empire. He was convinced that similar treatment of conquered peoples went

[1] Frontinus, in *Gromatici Veteres*, ed. Lachmann, p. 53. "Habent privati in saltibus non exiguum populum plebeium."

[2] Huschke, *op. cit.*, pp. 160, 167.

[3] Orelli, *Inscr. lat.* No. 750. "... ad praestanda tributa."

[4] *De R. R.*, i, 3, 12. "... occupatos nexu civium et ergastulis tenent."

[5] Strabo, vii, 5, 6. "*αὐτοὺς . . . Ῥωμαῖοι . . . ἠνάγκασαν (τὴν μεσόγαιον) γεωργεῖν.*"

[6] Pliny, *N. H.*, iii, 24. "... venalis cum agris suis populus."

[7] *Op. cit.*, p. 162. "... d. h. Colonen im spätern Sinne des Worts wurden."

back to the beginning of the Republic if not to the foundation of Rome itself. In all probability, he said, this was the origin of clientage.[1] Certainly the Italian allies of Hannibal, the Campanians and their neighbors,[2] the Bruttians,[3] the Picentians,[4] and the Lucanians [5] were settled in a dependent condition with certain financial and agrarian obligations. In addition Huschke held that the *obaerati* mentioned by Varro in Italy [6] and by Caesar in Gaul [7] were a semi-servile class, like the *nexi* and *clientes,* bound to their patron by a permanent hereditary relationship.[8] Somewhat freer, yet still in a condition of more or less dependence, were the coloni whom Catiline enlisted along with his freedmen in his troops,[9] and Ahenobarbus with his slaves, freedmen, and shepherds.[10]

In fact, Huschke concluded, conditions of serfdom were general all throughout the ancient world. In the Greek settlements in Italy the Bruttians in Lucania, the γαίωνοι of Heracleia, and the γαέωνοι of Sicily were the servile peasantry of the ruling nations. In Greece proper the Spartan Helots were the best known of numerous servile races cultivating the land, while traces of serfdom were also to be found in Egypt, Illyria, Asia, Syria, and Gaul. The general cause of all these types of serfdom was the subjection of a foreign race by a stronger nation. The barbarian colonate of the

[1] *Ibid.*, p. 163.
[2] Liv., xxvi, 34.
[3] Appian, *De Bel. Hannib.*, 61.
[4] Strabo, v, 4, 13.
[5] Strabo, vi, 1, 2 and 3.
[6] *R. R.*, i, 17, 2.
[7] *Bel. Gal.*, i, 4; vi, 13.
[8] Huschke, *op. cit.*, p. 167. "... ein dauerndes erbliches Verhältniss."
[9] Sallust, *Catil.*, 59.
[10] Caesar, *Bel. Civ.*, i, 34; i, 56.

Roman empire was merely a repetition of a very ancient fact.[1]

When Augustus organized the Roman Empire, he found the land of Italy and the provinces cultivated by peasants in all kinds and degrees of dependence. To standardize these heterogeneous servile relationships and to bind the peasants forever to the soil and thus check the desertion of the fields which had already increased to menacing proportions, was a work of first importance to the tax administration. The great imperial census of Augustus, Huschke believed, was the occasion of putting this general regulation into force. This law of Augustus he maintained was the *lex a majoribus constituta* mentioned in the Justinian Code.[2] It did not contain the detailed regulations regarding the colonate which appear in the Codes, it is true. This was the work of the legislators of the late Empire. But the general features of the colonate, such as the permanent adscription to the soil, were contained in the census regulations of Augustus; and it was in this general relationship that the barbarians were settled by Augustus and his successors.

In 1850 Savigny published the third edition of the essay on the colonate which had inaugurated these many theories.[3] To his original treatises he added a supplement written in 1849 in which he discussed the development in the theories of the colonate which had taken place since the last edition of his essay. The theories of Giraud and Puchta he regarded as incompatible with the principles of Roman law, while the attempt of Huschke to relate the colonate both to barbarian settlements and previous servile conditions he felt was "an uncritical intermixture of essentially different relations."[4] But the cautious old scholar who had looked

[1] Huschke, *op. cit.*, p. 168.

[2] *Cod. Just.*, xi, 51, 1. *Cf.* Huschke, *op. cit.*, p. 169.

[3] *Vermischte Schriften*, ii, 1-66.

[4] *Ibid.*, p. 56. "...so finde ich darin eine unkritische Vermischung wesentlich verschiedenartige Verhältnisse."

askance at so many previous explanations of the colonate in the earlier editions of his treatise, finally declared himself unreservedly in favor of the theory of barbarian settlements as developed by Zumpt. "It is," he said, "an explanation of the colonate, which not only is very simple and natural in itself, but also finds its confirmation in the fact that in a case of the fifth century the conquered Scyrae were expressly subjected to the colonate by an imperial law." [1]

[1] *Ibid.*, p. 55. "Es liegt darin eine Herleitung des Colonats, die nicht nur an sich höchst einfach und natürlich ist, sondern auch darin ihre Bestätigung findet, dass in einem Fall des fünften Jahrhunderts die besiegten Scyren durch ein Kaisergesetz ausdrücklich dem Colonat unterworfen wurden."

CHAPTER III

Analysis of the Early Theories

An analysis of the theories of the colonate advanced by writers mentioned in the previous chapter shows that there were five different types of explanation of the origin of the colonate. The colonate was derived from (1) voluntary enlistment of freemen oppressed by taxes and debts, (2) limited manumission of slaves which bound the freedman to the soil, (3) pre-Roman servile tenures in the provinces and pre-imperial dependent relationships in Italy, (4) barbarian captives settled in the Empire as serfs instead of slaves, and (5) administrative pressure largely actuated by fiscal considerations. Some writers held that one of these explanations was sufficient to bring about the adscription of the colonus to the soil; while others combined two or more of them. Our next task, then, is to examine the texts upon which these theories were based and to judge the adequacy of each as an acceptable theory.

The theory that the colonate was formed by a voluntary entrance into a dependent condition was not advocated by any writer as a complete explanation of the colonate. It was mentioned by Savigny in the first edition of his essay as a possible explanation,[1] later by Laferrière in connection with his client theory [2] and finally by Giraud.[3] The theory depends almost altogether on a passage in Salvian's *De*

[1] Savigny, *Abhand. der Akad. der Wiss. zu Berlin*, 1822, p. 23.

[2] Laferrière, *Histoire du dr. civ. de Rome*, ii, p. 441.

[3] Giraud, *Histoire du dr. français*, p. 157.

Gubernatione Dei. Salvian was describing the severe burdens of taxation which weighed heavily upon the small peasant proprietor. To evade the taxes the peasants frequently entered into the patronage of the rich. But the advantage gained was only a temporary one, for the patrons were often more grasping than the government and soon not only held the peasant-clients themselves wholly in their power but their children as well. "Wherefore," said Salvian, "some of those of whom we speak who are more prudent, or whom necessity has made prudent, seek the estates of the powerful and become coloni of the rich." [1]

Salvian wrote in about 495 A. D., more than a century and a half after the first laws in the Codes which regulated the condition of the coloni. It is easy to see how the small peasant proprietor who had become a client of an avaricious patron might better his condition by abandoning his land altogether and becoming a colonus of a great lord. For in the former condition he was at the mercy of his patron, while in the latter, although a serf, he was protected by the law in his rights and in the amount of his obligations. The numerous laws in the Codes which regulated the entrance of freemen into the colonate show that the colonate received frequent accessions from the free peasantry who no longer found their condition tolerable.[2] The passage from Salvian quoted above is valuable in showing one of the causes which brought about an increase in the number of the coloni after the colonate had once been established; but it offers no clue which would help to explain how or why the colonate was originally organized.

Laferrière regarded the colonate as an outgrowth of the

[1] Salvian, *De Gubernat. Dei*, v, 8, 43. "Itaque, nonnulli eorum de quibus loquimur, qui aut consultiores sunt, aut quos consultos necessitas fecit... fundos majorum expetunt, et coloni divitum fiunt."

[2] *Cf. Cod. Just.*, xi, 48, 19; 22; 23, 1.

old system of clientage, and the tendency of peasants to enter under the patronage of influential men, as reported by Salvian, he felt was a characteristic of all periods of Roman history. Aside from the fact that there are no records of clientage in the Empire earlier than the fifth century, it must be remembered that the peasant who was the client of a great patron was entirely different from a colonus. The client-peasant held the land which he had commended to his patron in precarious tenure, that is, wholly at the pleasure of his lord, while the colonus held his land in perpetuity and could not be removed from it in any way by the proprietor. In fact patronage was a movement away from the colonate, and the welcome which powerful patrons gave to runaway coloni threatened in many districts to destroy the adscription of the colonus to the soil, which the Codes tried so carefully to maintain.[1] The passage in Salvian, which Laferrière cited, plainly shows the difference between the peasant-clients and the coloni. Peasant proprietors despairing of meeting their taxes first commended themselves as clients to great lords. Then when they found that they were in an even worse condition than they had been before they gave up their lands altogether and became serf-tenants or coloni on the estates of rich landlords. But patronage itself had nothing to do with the formation of the colonate.

The second theory, that the colonate can be derived from a conditional manumission of slaves, had been first suggested by Savigny and later advocated by Puchta. Slave culture was proving unprofitable, it was said, so landowners found it advantageous to free their slaves on the condition that the freedmen and their descendants should remain as permanent serf-tenants on their lands. Since private arrangements which slave-owners might make with their slaves would have no effect on their legal status, Puchta supposed that new

[1] *Cf.*, De Zulueta, *De Patrociniis Vicorum* (Oxford, 1909), pp. 26, 50.

legislation in regard to emancipation of slaves was passed between the first and fourth centuries which permitted the freeing of slaves on the condition that the freedman be attached to the soil.

The theory of Puchta, however, remains a mere conjecture in the absence of any text relating to the supposed legislation. This is especially remarkable in the light of the full details which are given in the *Institutes* of Gaius and Justinian in regard to revisions of the manumission laws during the reigns of Augustus and Tiberius.[1] As Zumpt[2] and Savigny[3] have said, if legislation of such importance as this had been passed, it could not possibly have escaped the notice of the compilers of Justinian's *Corpus Juris Civilis*. So this theory died an early death.

The theories of voluntary enlistment of freemen and limited manumission of slaves never received very serious consideration, but the third theory, that the colonate was derived from earlier servile conditions, was more widely accepted than any other in the period before 1850. Cujacius regarded the coloni as the lineal heirs of the early *operarii* in Italy, while Schultz and Laferrière held that the colonate was an outgrowth of clientage. Rudorff related the coloni to the Egyptian γεωργός, Guizot to the Gallic client, while Dureau de la Malle and Giraud found in early Greek serfdom the prototype of the colonate.

Before the theory of early servile tenures can be regarded as a valid explanation of the origin of the colonate it is necessary to prove three things. First, it must be shown that the earlier servile condition was essentially similar to the condition of the colonate; second, that there was a

[1] Gaius, *Institutes*, i, 12-15; iii, 56-62, 70-76. Justinian, *Institutes*, i, 5, 3.

[2] *Rhein. Mus.*, iii (1845), p. 9.

[3] *Vermischte Schriften*, ii, pp. 60-61.

continuous development from the earlier serfdom to the colonate as it was legalized in the Codes; and, in the third place, that the previous servile relationships were widely enough extended throughout the Empire to serve as the basis of the colonate. But in most of the examples cited by writers advocating this hypothesis there was little which resembled the condition of the later colonate. In Italy, the *operarius* mentioned by Cujacius was a humble day-laborer,[1] but no reference has ever been discovered which even remotely indicates that he might have been a serf. The clients, mentioned by Schultz and Laferrière, it is true were persons in a condition of distinct dependence to their patrons; and no doubt they usually were used by their patrons as agricultural tenants on their estates. But the clients held the land wholly at the pleasure of their patrons and could be withdrawn from the land any time their patrons wished,[2] which was a condition diametrically opposed to that of the coloni. The clients were in a condition of personal dependence towards their patrons and were in no sense attached to the soil like the coloni. The assumption of Laferrière that when the patricians' tenure of the *ager publicus* changed from a precarious lease to permanent ownership, the clients at the same time changed from precarious to permanent tenants, is wholly without the support of any text. Like the limited manumission of slaves, which Puchta imagined, a change of such importance could not have failed to have left some record in contemporaneous literature or in the body of the law.

Rudorff believed that the colonate could be traced to previous servile conditions like that of the δημόσιοι γεωργοὶ of Egypt. Yet the references which he cited merely show

[1] *Cf.*, Cato, *De Agric.*, x, 1; Cicero, *Tuscul. Disput.*, v, 36, 104.

[2] *Cf. Dig.*, xliii, 26, 1, *pr.* "Praecarium est, quod precibus petenti utendum conceditur tandiu, quandiu is qui concessit patitur."

that the γεωργοὶ were state tenants paying a rent in kind (ἐκφόριον). The edict of Tiberius Julius Alexander in 68 A. D., in contrasting their position to that of the Alexandrian landlords does no more than imply that the γεωργοὶ were a distinctly inferior class;[1] and the references to Diodorus and Herodotus are no more definite. All we learn from Diodorus is that the γεωργοὶ were one of the humbler classes of Egyptian society below the priests, nobles and soldiers, but above tradesmen and handicraftsmen;[2] while Herodotus is even less explicit.[3] Hence we may conclude with Savigny[4] that on such inadequate evidence the theory of Rudorff can only be regarded as a mere conjecture.

Guizot maintained that the colonate was an outgrowth of the servile conditions in Gaul and other Celtic countries; and it is true that Caesar's Commentaries offer superior evidence of dependent relationships than the references cited by Rudorff. Guizot quoted no texts, but the passages in Caesar's *De Bello Gallico* in regard to Gallic clientage are well known.[5] There were two types of dependence in Gaul, that of the soldier who was bound never to desert his patron no matter how desperate his plight[6] and who might even be burnt on his lord's funeral pyre,[7] and that of the poor peasant burdened by taxes and debts and by the oppression of the rich who commended himself to a powerful protector.[8]

[1] *Cf. supra*, p. 36.

[2] *Cf.* Diodorus, i, 28; i, 74.

[3] *Cf.* Herodot., ii, 164.

[4] *Vermischte Schriften*, ii, p. 48.

[5] *Cf.* Garsonnet, *Locations perpétuelles* (Paris, 1879), pp. 30-32; Fustel de Coulanges, *Histoire des institutions politiques* (Paris, 1888-1892), i, pp. 11-18.

[6] Caesar, *Bel. Gal.*, vii, 40.

[7] *Ibid.*, vi, 19.

[8] *Ibid.*, vi, 11; 13. *Cf.* Garsonnet, *op. cit.*, p. 33; Fustel de Coulanges, *op. cit.*, p. 16.

The former type of retainer, however, was a soldier, who was a member of the military body-guard of his chieftain; he was not a peasant at all, so there could have been no relationship between him and the later serf-colonus. Whatever connection which might be shown to have existed between dependent conditions in Gaul and the colonate must have been with the Gallic peasant-client. Yet unfortunately the description of Caesar is too vague to give us much assistance. "The plebeians," said Caesar, "are considered almost like slaves, since they have no power themselves and are represented in no council. Very many, when they are crushed by debt or taxes or by oppression of the powerful, give themselves up in servitude to the nobles. These latter have all the rights in regard to them which a master has over his slaves." [1] In another chapter Caesar described the ancient institution of patronage "as designed so that no plebeian shall be in need of aid against a more powerful person; for each (patron) takes care to prevent his retainers from being oppressed or molested." [2]

The exact nature of the relations of the peasant-clients to their patrons must remain a matter of conjecture, for outside of some passages referring to debtors and clients following chieftains like Orgetorix,[3] Dumnorix,[4] and Vercingetorix,[5] the texts quoted above are our sole sources of

[1] Caesar, *Bel. Gal.*, vi, 13. "Plebs paene servorum habetur loco, quae nihil audet per se, nulli adhibetur consilio. Plerique, cum aut aere alieno aut magnitudine tributorum aut iniuria potentiorum premunter, sese in servitutem dicant nobilibus; in hos eadem omnia sunt iura, quae dominis in servos."

[2] *Ibid.*, vi, 11. "Idque eius rei causa antiquitus institutum videtur, ne quis ex plebe contra potentiorem auxilii egeret; suos enim quisque opprimi et circumveniri non patitur."

[3] *Ibid.*, i, 4.

[4] *Ibid.*, i, 18.

[5] *Ibid.*, vii, 4.

information. We can well imagine that the peasant-clients owed rents and services to their lord like the German slave-tenants described by Tacitus.[1] But to suppose that they were attached to the soil in a way in which they could not be removed at the pleasure of their patrons seems altogether unlikely. It must be remembered that, like the Roman client, the Gallic retainer was in a position of personal dependence towards his patron and not of predial dependence in relation to a lord's estate,[2] and we must not lose sight of the fact that the Gallic tribes before the Roman conquest were hardly in a condition in which permanent relationships in property in land could develop, such as adscription to the soil in perpetuity. Therefore to regard the coloni as the lineal descendants of the Gallic peasant-clients is an inference absolutely unwarranted by the facts at our disposal.

Dureau de la Malle and Giraud believed that the roots of the colonate could be found in various forms of early Greek serfdom. The sacred slaves attached to certain Greek temples, mentioned by Dureau de la Malle, were too utterly dissimilar to the coloni to have influenced the origin of the colonate in any way; but the several types of predial serfdom cited by Dureau de la Malle and Giraud at first glance seem to bear considerable resemblance to the colonate. When the Hellenes conquered Greece, in regions where the native inhabitants were not driven out or extirpated they appear to have been subjected to some form of serfdom. Traces of servile and semi-servile relationships have been found in Thessaly, Laconia, Argos, Crete, Macedon, Corinth, Attica and Boeotia, as well as in many parts of Magna Graecia.[3] But unfortunately most of the references to these servile

[1] *Germ.*, 25.

[2] *Cf.* Terrat, *Du Colonat en Droit Romain*, pp. 92-93.

[3] *Cf.* Garsonnet, *Locations Perpétuelles*, pp. 23-27; Paul Guiraud, art. "Colonat," in *La Grande Encyclopédie*, vol. xi, p. 1054.

tenures are brief and vague, and it is only in regard to the Penestes of Thessaly and the Helots of Laconia that anything like a definite description is to be obtained. The principal authority describing the Penestes is Athenaeus. "The Thessalians," he reported, "call those Penestes who were not born slaves but who have been taken prisoners of war. . . . They gave themselves up to the Thessalians by agreement to be their slaves on condition that they should not take them out of the country nor put them to death, but that they should cultivate the country for them and pay them a yearly revenue for it."[1] Dionysius said that they were subjected to servile chastisements[2] and Demosthenes referred to a Thessalian noble being followed in battle by two hundred of his Penestes,[3] which apparently indicates that, unlike slaves, they were capable of bearing arms.

The Helots were frequently mentioned in Greek literature but most of the details in regard to their status are given by Strabo and Athenaeus. In describing the conquest of Laconia by the Spartans, Strabo said that the native inhabitants submitted and were required to pay tribute to Sparta. "But the Heleii, who occupied Helos, revolted and were made prisoners in the course of the war. They were adjudged to be slaves with the conditions that the owner should not be allowed to give them their liberty nor sell them beyond the boundaries of the country. This was called the war of the Helots (1090 B. C.). The system of Helot slavery . . . continued from that time to the establishment of the dominion of the Romans. They were a kind of public slaves to whom the Lacedaemonians assigned habitations and required of them peculiar services."[4] Ath-

[1] Athenaeus, vi, 85. Trans. by Yonge.

[2] Dionys., *Antiq.*, ii, 9.

[3] Demosthenes, Περὶ Συνταξέως, 23.

[4] Strabo, viii, 5, 4. Trans. by Falconer.

enaeus said of the Helots, "They (the Spartans) impose every kind of insulting employment on the Helots such as brings with it the most extreme dishonor. . . . Every year they scourge them without any offence, in order to prevent their ever thinking of emancipating themselves from slavery. And besides all this, if any of them ever appear too handsome, they impose death as a penalty, and their masters are also fined for not checking them in their growth and fine appearances. And they give them each a certain piece of land, and fix a portion which they shall invariably bring them from it." [1] Pausanius [2] and Plutarch [3] likewise refer to the fixed rent which the Helots paid. They were state slaves [4] and while they could not be emancipated by the proprietor to whom they had been assigned, they apparently could be freed by the State, at least in times of stress. Plutarch, in his life of Kleomenes, told how Kleomenes, in attempting to obtain 500 talents, allowed the Helots to purchase their freedom at five minae apiece.[5]

Thus it is seen that the Penestes and Helots resembled the coloni in that they cultivated land in return for the payment of fixed rents and services and in their liability to military service; but in other respects they differed from them considerably. The Penestes and Helots were descendants of conquered tribes and always were referred to as slaves (δοῦλοι). They were regarded as slaves of the state and consequently could not be emancipated by their temporary masters, but might be freed by the state. The coloni on the other hand were free in their personal status and

[1] Athenaeus, xiv, 74. Trans. by Yonge. *Cf. ibid.*, vi, 87; 102.

[2] iv, 14, 5.

[3] *Instituta Laconica*, 32.

[4] Pausanius, iii, 20, 6.

[5] Plutarch, *Kleomenes*, 23.

were called "*liberi*" or "*ingenui*" in the Codes. They had to submit to servile chastisements in case they attempted to desert their holdings, but otherwise they could sue their landlords in court for any personal indignities. But in the case of the subject classes of Thessaly and Sparta a systematic policy of terrorization was practiced.[1] The primary object of these institutions apparently was to keep the numerically superior servile race in subjection to their conquerers rather than to ensure the constant cultivation of the soil, the *raison d'être* of the colonate. The Penestes and the Helots could not be sold out of the country, but there is no record that they were permanently attached to any estate and had hereditary rights in a plot of land, the two essential characteristics of the coloni.

Our information concerning the other types of Greek serfdom is so vague that we can come to no definite conclusions about them. Probably they resembled the Penestes and Helots in general.[2] But even if they were considerably more like the coloni than the Penestes and Helots were, it is difficult to see what possible connection there could have been between these various types of Greek serfdom and the Roman colonate. In the first place the causes of their origin were different. The origin of Greek serfdom was the conquest of native tribes. Whatever the origin of the Roman colonate may have been, it certainly did not arise in this way. It had never been the Roman policy even in the earliest historical times to subject a conquered people to serfdom; and the legislation in regard to the colonate came centuries after the Roman conquests had been completed. In the second place, there was an interval of many centuries between the end of Greek serfdom and the first authentic

[1] *Cf.* Thucydides, iv, 80, which describes the assassination in cold blood of two thousand of the bravest of the Helots.

[2] *Cf.* Athenaeus, vi, 84 and 86.

records of the beginning of the colonate. Most of the accounts of Greek serfdom refer to early times. Only in regard to the Helots do the records show that serfdom lasted until the Roman conquest.[1] It was not until five centuries later that the legislation establishing the colonate appeared. During the intervening period there is not the slightest evidence that serfdom of any kind existed in Greece.[2] That the colonate in Greece should have finally developed from the influence of serfdom in early antiquity when the causes which had brought about the earlier servile tenures had ceased to operate and when the servile tenures themselves had been obsolete for centuries, is a conjecture utterly devoid of justification. As well might one relate modern Mexican peonage to conditions under Montezuma.

The whole general theory of earlier servile conditions, as presented by writers from Cujacius to Giraud, is absolutely untenable as an explanation of the origin of the colonate. In no case was an earlier type of serfdom offered as a prototype of the colonate that resembled the latter in its essential characteristics. In no case was a continuous development of serfdom from an ancient status of dependence to the Roman colonate proved even in regard to a single country. And finally, no writer was able to show that servile conditions were general throughout the world, or that the types which did exist were similar enough to each other to form the basis of an institution which existed in every province of the Empire. The colonate entered too vitally into the economic and social organization of the late Empire to be merely the survival of an empty form.

The next theory of the colonate to be considered is the theory of barbarian settlements. Suggested first by Gothofredus and connected with the *Constitutio de Scyris* by

[1] Strabo, *loc. cit.; cf.* Xenophon, *Hell.*, i, 2, 18; vi, 5, 28; vii, 2, 2.

[2] *Cf.* Seeck in Pauly-Wissowa's *Real Encyclopädie*, vol. iv, p. 493.

Wenck, it was elaborated in detail by Zumpt in 1845 in an essay which was beyond all question the leading explanation of the origin of the colonate in the period before 1850.[1] Even Savigny, who for a quarter of a century had retained an attitude of scepticism in regard to previous attempts to explain the origin of the colonate, declared himself completely convinced by Zumpt's arguments. Huschke in 1847 added new references which supported Zumpt's theory and showed that the practice of settling barbarian *dedititii* on the land was of much earlier origin than Zumpt had supposed. But Huschke injured his case by attempting to correlate barbarian settlements with earlier relations of dependence in Italy and the provinces, which was, as Savigny had said, an intermixture of essentially different conditions. Likewise Huschke's assumption that the census of Augustus unified the heterogeneous mass of servile and semi-servile conditions in the Empire and thus created the colonate is a supposition without the slightest documentary foundation. Just as in the case of the legislation supposed by Puchta, a law of as fundamental importance as that which Huschke imagined could not have escaped all mention from contemporary literature or the writings of the Roman jurists. However, notwithstanding these errors in his treatment, Huschke's inclusion of references to barbarian settlements earlier than those given by Zumpt was a contribution of no little importance in the formation of a complete statement of the theory of barbarian settlements.[2]

The principal source upon which the theory of barbarian

[1] Savigny's essay had almost exclusively concerned itself with the legal status of the coloni as set forth in the Codes.

[2] It is interesting to note in a recent work of the Italian historian Ferrero that Huschke's theory of the relation of barbarian settlements to the colonate is definitely accepted. *Short History of Rome* (trans. by Chrystal, New York, 1919), vol. ii, p. 318 and note 1.

settlements rests is the edict of Honorius and Theodosius of 409 A. D. regulating the settlement of the conquered Scyrae on Roman soil.[1] The edict stated specifically that the Scyrae were settled as coloni.[2] The usual penalties in regard to the flight of coloni were applied to them and it was expressly provided that none of them were to be enslaved.[3] Finally, like the regular coloni, they were subject to military service, although in this particular case the furnishing of recruits was remitted for twenty years.[4]

This edict was published seventy-seven years after the date of the first extant constitution in the Codes regulating the condition of the serf-coloni.[5] Consequently its value in determining the origin of the colonate rests on the inference that barbarian settlements in earlier times were of similar nature. In this respect it corresponds to the excerpt from Salvian of 495 A. D. quoted above, which described the voluntary entrance into the colonate of small peasant proprietors who had been ruined by taxes and debts. Both of these texts in themselves merely show that the ranks of the serf-coloni were augmented in later years on the one side by conquered barbarians and on the other by free peasants in financial difficulties. But while the passage in Salvian is unique and can be related to no earlier references describing a similar voluntary entrance into an inferior status, the constitution of Honorius and Theodosius II is the last of a long list of texts which refer to the settlement of the barbarian *dedititii* on Roman soil, most of which took place before the colonate was legally established in the Empire. If it could be shown, then, that the *Constitutio de Scyris* was

[1] *Cod. Theod.*, v, 6 (4), 3. *Cf. supra*, pp. 34-35.

[2] "Non alio iure quam colonatus apud se futuros."

[3] "Ac nulli liceat . . . eos . . . in servitutem trahere."

[4] "Juniorum quoque intra . . . viginti annos praebitione cessante."

[5] *Cod. Theod.*, v, 17 (9), 1 (332 A. D.).

typical of the previous settlements of barbarians, a strong case would be presented in favor of the theory that the barbarian *dedititii* served as the prototype of the coloni of the Codes.

In addition to the edict of Honorius and Theodosius II, Zumpt and Huschke offered forty-four references to forced settlements of barbarians in the Empire. But unfortunately none of these citations show definitely whether the condition of the barbarians was like that of the Scyrae or not. The later settlements seem to bear the closest resemblance to that of the Scyrae, while the farther back the barbarian settlements are traced the less conclusive the evidence appears. In the period between the establishment of the Scyrae in the Empire and the constitution of Constantine in 332 A. D., barbarian settlements were reported to have been made by Gratian, Valentinian I, Julian, Constantius II, and Constantine. Ammianus related that Gratian in 377, after he had conquered the Taefali, " distributed all the living around Mutina, Regium and Parma, Italian towns, to cultivate the fields." [1] In 370, during the reign of Valentinian I, " Theodosius, at that time commander of the cavalry, attacked the Alamanni, killed many, and took some prisoners, whom at the emperor's command he sent to Italy, where some fertile districts around the Po were assigned to them, which they still inhabit as *tributarii*." [2] Julian likewise made *tributarii* paying a *vectigal* [3] out of the barbarian captives, while the Limigantes offered to surrender to Constantius II, saying

[1] Ammian., xxxi, 9, 4, "Vivos (Taefalorum) omnes circa Mutinam, Regiumque et Parmam, Italica oppida, rura culturos exterminavit."

[2] Ammian., xxviii, 5, 15. "Alamannos adgressus Theodosius (ea tempestate magister equitum) pluribus caesis, quoscumque cepit ad Italiam iussu principis misit, ubi fertilibus pagis acceptis, iam *tributarii* circumcolunt Padum."

[3] Ammian., xx, 4, 1. "... a barbaris ... quos *tributarios* ipse (Julianus) fecit et vectigales."

that "they were ready to take up distant lands within the Roman Empire and to submit to the duties and name of *tributarii*." [1] Finally Eusebius related in his *Life of Constantine* that in 344 A. D., after the emperor had subdued the Sarmatians, "those who were capable of serving, Constantine incorporated in his own troops; to the rest he allotted lands to cultivate for their own support." [2]

Three things are noteworthy in the passages quoted above: the barbarians were used for cultivating lands, they were enrolled as soldiers in the legions, and they were in three cases spoken of as *tributarii*. Both the coloni in general and the conquered Scyrae in particular were used to cultivate the land and were subject to military service, while *tributarii* was one of the common designations of the coloni in the Codes.[3] However, nothing precludes the possibility that the barbarians were settled under imperial supervision in special districts where they cultivated the land, furnished recruits for the army, and paid tribute. *Tributarii* sometimes was used synonymously with coloni, it is true, but also it was the designation applied to all provincials paying the *tributum solum*. Specifically it referred to taxable persons on imperial estates who paid the *vectigal* directly to the emperor as opposed to the *stipendiarii* who paid the tax to the *aerarium* of the people.[4] So the description of these settlements of Constantine and his successors by no means con-

[1] Ammian., xix, 11, 6. "Limigantes ... parati intro spatia orbis Romani terras suscipere longe discretas ut ... *tributariorum* onera subirent et nomen."

[2] Eusebius, *Life of Constantine*, iv, 6 (trans. by McGiffert). *Cf. Excerpt Constant.*, 32. "Sed servi Sarmatarum adversum omnes dominos rebellarunt; quos pulsos Constantinus libenter accepit et amplius trecenta millia hominum mistae aetatis et sexus per Thraciam, Scythiam, Macedoniam, Italiamque divisit."

[3] *Cf. Cod. Theod.*, x, 12, 2, 2; *Cod. Just.*, xi, 48, 12.

[4] Gaius, *Inst.*, ii, 21. *Cf.* Justinian, *Inst.*, ii, 1, 40.

clusively shows that the barbarians other than the Scyrae became coloni. And as these settlements were all made after 332 A. D., when the legal colonate was known to have been in existence, they can give little help in determining the origin of that institution except by way of analogy. The proof of this must rest on the evidence of barbarian settlements prior to Constantine.

Zumpt traced the policy of establishing barbarian cultivators within the Empire back to Marcus Aurelius. Settlements are recorded under the reigns of Constantius I, (293-306 A. D.), Diocletian and Maximian (284-305 A. D.), Probus (276-282 A. D.), Aurelian (270-275 A. D.), Claudius II (268-270 A. D.), and Marcus Aurelius (161-180 A. D.). The objects of these settlements, as of the settlements after Constantine, was to cultivate the waste lands and to furnish recruits.[1] The fullest description of the settlement of barbarians, and the one upon which Zumpt and Huschke place the most emphasis, is contained in the *Panegyric to Constantius* of Eumenius.

The hiding places of the forests are not able to protect the barbarians from being forced to surrender to thy power and from going with their wives and children to places formerly deserted, so that the very places which perhaps they themselves ravaged in their pillaging expeditions they now are forced to put under cultivation by servile labor (*serviendo*).[2]

In the next chapter he continues:

Now we see crowds of captive barbarians sitting in all the

[1] Eumenius, *Paneg. Constantino*, 6 (concerning Constantius), "Franciae nationes ... ut, in desertis Galliae regionibus collocatae, et pacem Romani imperii cultu iuvarent et arma dilectu.'

[2] Eumenius, *Paneg. Constantio*, 8. "Nec ... perfugia silvarum barbaros tegere potuerunt, quominus ditioni tuae omnes sese dedere cogerentur et cum conjugiis ac liberis ad loca olim deserta transirent ut, quae fortasse ipsi depraedando vastaverant, *culta redderent serviendo*."

porticoes of the cities . . . and all these have been assigned to thy provincials *for their service* (*ad obsequium*) until they are applied to their destined work of cultivating uninhabited places. The Chamavus and the Frisian, therefore, now plows for me and the former wanderer and pillager now gets dirty from his work and exercise . . . the barbarian cultivator lowers the price of grain. Nay even he is summoned to military service, he hastens forth and congratulates himself that he can serve as a soldier.[1]

Later in the panegyric Eumenius says:

So just as by thy order, Emperor Diocletian, Asia filled the deserted districts of Thrace with its inhabitants transplanted (in those regions), just as by thy will, Emperor Maximian, the Frank, restored to the realm and received back under our laws, cultivated the waste lands of the Nervii and Treveri; so now through thy victories, unconquerable Emperor Constantius, all the uninhabited land of the Ambiani, Bellovaci, Tricassini, and Lingonici is now at peace under the barbarian cultivator.[2]

The barbarian transplanted in the realm could be used as a soldier; therefore he was not a slave. He was forced to occupy lands assigned to him by the government, usually lands already deserted and lying waste, not those which he would be likely to choose for himself as a free settler. He

[1] Eumenius, *op. cit.*, 9. "Nunc vidimus . . . totis porticibus civitatum sedere captiva agmina barbarorum . . . atque hos omnes provincialibus vestris *ad obsequium* distributos, donec ad destinatos sibi cultus solitudinum ducerentur. Arat ergo nunc mihi Chamavus et Frisius, et ille vagus ille depraedator exercitio squalidus operatus . . . et cultor barbarus laxat annonam. Quin etiam ad dilectum vocetur, accurrit . . . et servire se militiae nomine gratulatur."

[2] Eumenius, *op. cit.*, 21. "Ita sicuti pridem tuo, Diocletiane Auguste, jussu implevit deserta Thraciae translatis incolis Asia, sicut postea tuo, Maximiane Auguste, nutu Nerviorum et Treviorum arva jacentia velut postliminio vestitutus et receptus in leges Francus excoluit; ita nunc per victorias tuas, Constanti Caesar invicte, quidquid infrequens Ambiano et Bellocavo et Tricassino solo Lingonicoque restabat, barbaro cultore requiescit."

was compelled to put these lands under cultivation "by servile labor" (*serviendo*). If there were no waste lands to be reclaimed at the time of the distribution of the *dedititii,* then the barbarian was assigned to provincial proprietors "for their service" (*ad obsequium*) until recalled by the government to the work of reclamation. This description does not seem to fit a free man any more than the eligibility of the barbarian for military service fitted a slave; wherefore Zumpt concluded that the barbarians were settled in the intermediate status of the colonate.[1]

However, this description does not seem any more applicable to serf-coloni than to free peasant proprietors. The coloni were attached in hereditary bonds to a plot of land from which they could not be moved. There is not the slightest hint in the passages quoted above that the transplanted barbarians were bound to the soil in this way. On the contrary they were apparently moved about at the pleasure of the government. When not needed in any reclamation project that the government was conducting, they were temporarily assigned to proprietors in need of agricultural labor, only to be recalled later when the government desired their services. That they were in a condition of dependence somewhere between slavery and freedom we can readily agree; that it would have been very easy to transform persons in this intermediate status into serf-coloni, provided that the economic and social conditions demanded such a transformation, can also be accepted. But that the status itself of the transplanted barbarian was the prototype of the colonate or that it had any influence whatever on the economic and legal condition of the coloni is a hypothesis which certainly cannot be supported by the evidence from Eumenius.

There are numerous texts describing barbarian settle-

[1] Zumpt, *op. cit.*, p. 24.

ments before Constantius, but in none is the account so clear as in the passages of Eumenius quoted above. Diocletian and Maximian transplanted thousands of Carpi, Bastarnae, and Sarmatians within the Empire.[1] "Germans, Bastarnae, Gepidi, Gautunni, Burgundians, Vandals, and Franks were settled by the Emperor Probus.[2] "Germany has been subdued throughout its whole extent," said Vopiscus, "All the barbarians plow and sow for you and fight for you against interior tribes."[3] "The Bastarnae, a Scythian tribe" related Zosimus, "which he (Probus) himself conquered, he admitted into Thrace, settling them on assigned fields. There they continued to live in accordance with the laws of the Romans. Likewise after the Franks had submitted to the emperor and obtained homes from him, a part of them revolted, procured a fleet of ships and harrassed all Greece. They even reached Sicily, broke into Syracuse and committed many murders there. At length they sailed to Africa, but were driven away from there by troops from Carthage. Nevertheless they were able to reach their homes without accident."[4] The Vandals, Gepidi, and Gautunni likewise wandered away from the regions in which they had been settled by Probus and it took

[1] Eutropius, ix, 25; Orosius, vii, 25; Eusebius, *Chron. Canon.*, 2310 (p. 187, ed. Schoene); Ammian., xxviii, 1, 7; Eumenius, *Paneg. Constantio* 5.

[2] Vopiscus, *Probus*, 15; 18; Zosimus, i, 68; 71.

[3] Vopiscus, *Probus*, 15. "Subacta est omnis qua tenditur late Germania ... Omnes jam barbari vobis arant, vobis jam serunt, et contra interiores gentes militant."

[4] Zosimus, i, 71. "Βαστάρνας δέ, Σκυθικὸν ἔθνος, ὑποπεσόντας αὐτῷ προσίμενος κατῴκισε Θρακίοις χωρίοις. καὶ διετέλεσαν τοῖς Ῥωμαίων βιοτεύοντες νόμοις. καὶ Φράγκων τῷ βασιλεῖ προσελθόντων καὶ τυχόντων οἰκήσεως μοῖρά τις ἀποστᾶσα, πλοίων εὐπορήσασα, τὴν Ἑλλάδα συνετάραξεν ἅπασαν, καὶ Σικελίᾳ προσοχοῖσα καὶ τῇ Συρακουσίων προσμίξασα πολὺν κατὰ ταύτην εἰργάσατο φόνον. ἤδη δὲ καὶ Λιβύῃ προσορμισθεῖσα, καὶ ἀποκρουσθεῖσα δυνάμεως ἐκ Καρχηδόνος ἐπενεχθείσης, οἷα τε γέγονεν ἀπαθὴς ἐπανελθεῖν οἴκαδε."

several pitched battles with the imperial forces before they were subdued again.[1]

As we get farther away from the legal adscription of the coloni in the fourth century, the barbarian settlements appear less and less like the distribution of the Scyrae as coloni among various proprietors. The settlements of Probus seem to have been in military preserves, in several cases insufficiently guarded, so that the barbarians broke out and ravaged their way back to the home land. Probably their condition did not differ greatly from that of the natives in provinces incorporated in the Empire paying tribute to Rome, except in the closer supervision and higher rents paid on the imperial domains which caused some of the barbarians to revolt. But there is nothing in the evidence of the settlements of Probus which gives valid ground for believing that the status of the transplanted barbarian served as a prototype for the colonate.

Probus' predecessors, Aurelian and Claudius II both transplanted barbarians within the realm, Aurelian in Etruria,[2] and Claudius in Macedonia and Thrace.[3] A passage in

[1] Vopiscus, *Probus*, 18. "Ad Thracias rediit (Probus), et centum millia Bastarnarum in solo Romano constituit; qui omnes fidem servaverunt. Sed quum et ex aliis gentibus plerosque pariter transtulisset, id est ex Gepidis, Gautunnis, et Vandalis, illi omnes fidem fregerunt et, occupato bellis tyrannicis Probo, per totum paene orbem, pedibus et navigando, vagati sunt, nec parum molestiae Romanae gloriae intulerunt. Quos quidem ille diversis vicibus, variisque victoriis oppressit."

[2] Vopiscus, *Aurel.*, 48.

[3] Zosimus, i, 46. "*ὅσοι (Σκηθῶν) διεσώθησαν ἢ τάγμασι Ῥωμαίων συνηριθμήθησαν, ἢ γῆν λαβόντες εἰς γεωργίαν ταύτῃ προσεκαρτέρησαν.*" In later years Fustel de Coulanges placed great emphasis on this passage and translated it, "Parmi ceux qui échappèrent au massacre, les uns furent incorporés dans les corps de troupes romaines, les autres reçurent de la terre à cultiver et *furent attachés à cette terre.*" *Recherches sur quelques problèmes d'histoire*, pp. 44-45. But the passage "*γῆν λαβόντες εἰς γεωργίαν ταύτῃ προσεκαρτέρησαν*" translated literally merely says "taking the land for cultivation, they adhered firmly to it." The Latin translation of

Trebellius Pollio in regard to the settlements of Claudius, Zumpt held as one of the most important evidences of his theory.[1] "Roman provinces," said Pollio, "were filled with barbarian slaves and Scythian cultivators. From a Goth the barbarian was made a soldier and a *colonus,* and there was no region which did not have Gothic slaves in a kind of triumphant servitude."[2] Part of the Goths, said Zumpt in his interpretation of this text, were used as slaves, but part as cultivators who were expressly called *coloni* and who were subject to military service.[3] However, the use of *coloni* in regard to the transplanted barbarians is not as significant as it at first appears. *Colonus* at the time of Claudius' victory over the Goths (269 A. D.) still meant a free tenant.[4] The eulogistic phrases of the panegyrist Pollio can be of little assistance in determining just what the status of the transplanted Goths was.

Fortunately the references in regard to the settlements of Marcus Aurelius are more specific. The three principal barbarian tribes with whom Marcus fought were the Marcomanni, the Iazyges, and the Quadi.[5] In 168 A. D. Marcus defeated the Marcomanni and their allies, and, according to the report of Julius Capitolinus, "he received the Mar-

Löwenklau, in the edition of 1679, is "vel terram colendam nacti, totos agriculturae se dediderunt." Fustel de Coulanges manifestly is in error in saying that the Scyths "furent attachés à cette terre" like the later serf-coloni.

[1] *Cf.* Zumpt., *op. cit.*, p. 16.

[2] Treb. Pollio, *Claudius*, 9. "Impletae barbaris servis, Scythibusque cultoribus Romanae provinciae. Factus miles barbarus et *colonus* ex Gotho; nec ulla fuit regio, quae Gothum servum triumphali quodam servitio non haberet."

[3] Zumpt, *op. cit.*, p. 16.

[4] *Cf. Dig.*, xix, 2, 14. "Quid ad certum tempus conducit... colonus est" *Dig.*, xix, 2, 25, 2. "Quin liceat colono vel inquilino relinquere conductionem, nulla dubitatio est." *Cf. Dig.*, xix, 2, 24; xlix, 14, 3, 6.

[5] Dio Cassius, lxxii, 11; 19.

comanni in surrender and transplanted very many into Italy."[1] The Quadi likewise sued for peace and surrendered all their captives and large numbers of horses and cattle.[2]

Besides these who came to Marcus, many others dispatched envoys . . . . offering to surrender themselves. Some of them were sent on campaigns to other parts of the world. . . . . Others received land in Dacia or in Pannonia or in Moesia (the Danube provinces) and Germany and Italy itself. A few of them who settled at Ravenna made an uprising and even dared to take possession of the city; and for this reason he did not again bring any barbarian into Italy, but made even those who had previously come there find homes outside.[3]

Seven years later (175 A. D.) land north of the Danube was assigned to the Marcomanni and the Quadi,[4] while the Iazyges, who had formerly lived north of the Black Sea, were given land west of Dacia and north of the Danube and compelled to furnish 8000 recruits.[5]

And when the Iazyges proved themselves most useful to him (Marcus) he released them from many of the restrictions imposed upon them, indeed, from all, save from the arrangements made in regard to their gathering and mutual intercourse, and the provisions that they should not use boats of their own and should keep away from the islands in the Danube. And he permitted them to go through Dacia and have dealings with the Rhoxolani as often as the governor of Dacia would give them permission.[6]

[1] Capitolinus, *Marcus*, 22. "Accepit in deditionem Marcomannos, plurimis in Italiam traductis."

[2] Dio Cassius, lxxii, 11.

[3] *Ibid.*, lxii, 11 (trans. by Foster).

[4] *Ibid.*, lxxii, 15.

[5] *Ibid.*, lxxii, 16.

[6] *Ibid.*, lxxii, 19.

This passage in regard to the Iazyges from Dio was used by Zumpt to show that the transplanted barbarians were not slaves. Slaves were not permitted to make five hundred-mile journeys through a whole province in order to trade with their former neighbors.[1] But Dio's description of the Iazyges is certainly no more applicable to coloni than to slaves. Restrictions in regard to assemblies, the use of boats, and long commercial journeys had nothing to do with serfs attached in perpetuity to the soil. They seem far more aptly to concern a subject people owing tribute and military service and kept to their obligations by the strict military control of the Roman legions. This conclusion seems even more likely from a passage in the following chapter of Dio Cassius in regard to the Quadi and Marcomanni who had settled on the border west of the Iazgyes. "The Quadi and the Marcomanni," said Dio, "sent envoys to Marcus saying that the two myriads of soldiers that were in the forts would not allow them to pasture or till the soil or do anything else with freedom."[2] The condition of the Iazyges, Quadi, and Marcomanni was manifestly not that of the colonate. It may be objected, indeed, that this strict military control existed only in the border. But it must be remembered that with the exception of the settlements in Italy all the barbarian settlements that were recorded were in provinces close to the northern frontier, Gaul, Illyria, the Danube provinces, Thrace, Macedonia, Germany and Britain;[3] and the unfortunate experience which Marcus had with the barbarians settled near Ravenna in Italy showed the shortcomings of the use of barbarians as cultivators of the soil without a sufficient armed force of legionaries in control.

[1] Zumpt, *op. cit.*, p. 13.

[2] Dio Cassius, lxxii, 20, trans. by Foster.

[3] A few of the Scyrae in the fifth century were granted to proprietors in Bythinia. *Cf.* Sozomenus, ix, 5.

The transplantation of the barbarians in Roman territory in the first century of the Empire was likewise largely in frontier settlements. In the reign of Nero, before the conquest of Dacia, when the Danube still formed the boundary of the Empire, more than one hundred thousand barbarians from across the Danube, with their wives, children, princes, and kings were settled in the border province of Moesia, where they were compelled to pay tribute.[1] Tiberius settled forty thousand German *dedititii* on the left bank of the Rhine,[2] while a few years earlier Augustus, after he had driven the Germans back beyond the Elbe, installed the tribes of the Suebi and Sigambri on the Gallic side of the Rhine.[3] About the same time the Ubii were transferred from the right to the left bank of the Rhine,[4] and the Ardiaei and other Illyrian pirates were removed from the sea-coast to the hinterland.

Later writers call the Ardiaei, Vardaei. The Romans drove them into the interior from the sea-coast, which was infested with their piracies, and compelled them to cultivate the ground; but as the country was rugged and barren, and not adapted to husbandry, the nation was entirely ruined and nearly extinguished. The same happened to other neighboring nations.[5]

These passages cited by Huschke[6] show plainly that the

[1] Orelli, *Inscr. lat.*, 750 ... Moesiae, in qua plura quam centum mill. ex numero Transdanuvianor. ad praestanda tributa cum coniugib. ac liberis principib. aut regibus suis transduxit."

[2] Eutropius, vii, 9. "Quo bello XL captivorum milia ex Germania (Tiberius) transtulit et supra ripam Rheni in Gallia conlocavit." *Cf.* Suetonius, *Tiberius*, 9.

[3] Suetonius, *Augustus*, 21. "Germanosque ultra Albim fluvium summovit, ex quibus Suebos et Sigambros dedentis se traduxit in Galliam atque in proximis Rheno agris conlocavit."

[4] Strabo, iv, 3, 4.

[5] Strabo, vii, 5, 6 (trans. by Falconer).

[6] *Ueber den Census der frühern römischen Kaiserzeit*, pp. 160-162.

barbarians were settled *en masse* in tribes under strong military control.[1] The settlements of the *dedititii* during the Republic were of the same general nature. In 180 B. C. forty thousand Ligurians were settled in Samnium.

The Ligurians who did not expect an attack, were surprised and surrendered. Cornelius and Balbius determined to bring them down from their mountains into a plain country, so far from home that they would have no hope of a return. There was a tract of *ager publicus* of the Roman people among the Samnites which formerly had belonged to the Taurasinians. There forty thousand men of free condition with their women and children, were transplanted at the expense of the public.[2]

Very similar, also was the condition of the Campanians, and the other Italian allies of Hannibal after the Second Punic War, according to Livy.

They (the senate) ordered that all the Campanians, Atellanians, Calatinians, and Sabatinians should be free with a proviso that none of them should become Roman citizens or Latin con-

[1] Huschke believed that the Triumpilini, one of the fifty-seven Alpine tribes mentioned by Pliny (*N. H.*, iii, 24) in 77 A. D., were in the condition of coloni at that time. The meaning of the passage in Pliny describing them is obscure. "Verso deinde Italiam pectore Alpium,... Triumpilini venalis cum agris suis populus,"—"on the Italian side of the Alps are the Triumpilini, a people for sale with their fields." Bostock and Riley in a note on this passage (*The Natural History of Pliny*, i, p. 254, note 3) say that it probably means that the Triumpilini originally acknowledged their subjection to Rome for a sum of money, and De Grandsagne in his translation (*Histoire naturelle de Pline*, iii, p. 103) rendered the passage "les Triumpilins qui se sont vendus eux et leur territoire aux Romains." *Cf. supra*, p. 59.

[2] Liv., xl, 38. "Ligures, qui... non expectassent bellum, improviso oppressi... dediderunt se. Eos... deducere ex montibus in agros campestres procul ab domo, ne reditus spes esset, Cornelius et Balbius statuerunt... Ager publicus populi Romani erat in Samnibus, qui Taurasinorum furat. Eo... traducti sunt publico sumptu ad quadraginta milia liberorum capitum cum feminis puerisque."

federates; that a place should be assigned to them to inhabit beyond the Tiber but not contiguous to it; that neither they themselves nor their posterity should acquire or possess any property anywhere except in the Veientian, Sutrian, or Nepetian territories; and that no one should possess a greater extent of land than fifty *jugera*.[1]

We have presented in the preceding pages all of the important references upon which the theory of Zumpt and Huschke was based. In no case before the *Constitutio de Scyris* is there unmistakable evidence that the barbarians were settled as coloni. Most of the references seem rather to point to mass settlements of barbarians under their own leaders in assigned districts where they were forced to pay tribute and to furnish recruits for the legions. It was a condition not at all unlike that of the native inhabitants of newly conquered Roman provinces. In both cases a large number of troops was required to see that the tribute was collected and that the conquered people did not revolt or leave their homes. The barbarians might object, like the Marcomanni and Quadi, to this irksome military supervision, but repeated experiences of the difficulty of holding the barbarians in regions assigned to them had shown the Romans that it was necessary. The limitation of the right to free movement, however, was applied to the tribe as a whole and not to individuals. None of the references cited above indicate that the individual barbarian was attached to any particular plot of land which he must cultivate and which neither he nor his children might leave. The colo-

[1] Liv., xxvi, 34. "Campanos omnis, Atellanos, Calatinos Sabatinos... liberos esse iusserunt ita, ut nemo eorum civis Romanus aut Latini nominis esset; ... locus ubi habitarent trans Tiberim, qui non contingeret Tiberim, daretur; ... ne ipsi posterive eorum uspiam pararent habitarentve nisi in Veiente, Sutrino Nepesinove agro; dum ne cui maior quam quinquaginta iugerum agri modus esset." *Cf.* Appian, *Bell. Han.*, 61; Strabo, v, 4, 13; vi, i, 2 and 3.

nate was not the condition of a subject and alien nationality but was a mutually binding relationship which existed between single peasants and the proprietor of the land which they held as perpetual tenants.

It is no doubt true that the descendants of the transplanted barbarians became coloni, just as the descendants of the native peasantry of the provinces and of the Italian agricultural tenantry eventually formed the material from which the serf-coloni were obtained. But the influence of barbarian settlements in the evolution of the condition of the peasantry was enormously exaggerated by Zumpt and his followers. At no time was the number of barbarians settled in Roman territory more than an insignificant fraction of the agricultural population of the Empire.[1] It is far more likely that the economic status of the descendants of the transplanted barbarians should gradually have merged itself into the condition of the peasantry of the surrounding districts, than that the condition of the barbarians should have served as the model and prototype for that of the indigenous peasantry. Not only was the number of transplanted barbarians relatively small in relation to the agricultural population of the Empire, but the barbarians were located in only a few provinces. All the numerically important barbarian settlements were along the northern frontier, where agriculture was a consideration distinctly secondary to that of defense. Only occasionally do we hear of barbarians being transported to Thrace, Macedonia or Italy. In the great grain provinces of Africa, Egypt, Sicily and Spain, where agriculture was of supreme importance and where there was little danger of invasion, there is not the slightest evidence that barbarian settlements were ever made or even contemplated. The colonate was primarily organized to insure the steady cultivation of the land. It was the

[1] *Cf.* Terrat, *Du colonat en droit romain*, p. 96.

last desperate remedy of a decaying empire applied in hopes of checking the universal desertion of the fields which threatened the very existence of Roman civilization. An adequate explanation of its origin must rest on conditions far more fundamental and universal than the transplantation of barbarian *dedititii* in the Empire.

The last theory of the colonate to be introduced before 1850 was the theory of administrative pressure. Advocated simultaneously in 1847 by Wallon in France and by Hegel in Germany, it apparently had not come to the attention of Savigny in 1849, for he does not mention it in his review of the theories of the colonate. But once read it received ready acceptance and in the period between 1850 and 1880 it formed the almost exclusive basis for the theories of the colonate. Hegel presented little more than a skeleton outline and Wallon's treatment of the problem was filled with highly questionable assumptions; yet to the writers of the next generation the germs of a more satisfactory explanation of the origin of the colonate seemed to lie in their treatises than in the earlier theories. The period from 1850 to 1880 was largely devoted to the further development of the theory of administrative pressure.

CHAPTER IV

The Theory of Administrative Pressure

The first writer in the second half of the century to take up the problem of the colonate was Revillout.[1] He developed the theory of administrative pressure far more comprehensively than either Hegel or Wallon, and at the same time limited administrative pressure to a question of taxation. With the general thesis of Wallon, Revillout stated that he was in agreement,[2] but while Wallon believed that traces of predial serfdom were to be found from the beginning of the Empire, Revillout maintained that the serf-colonate was an institution expressly created by Constantine and his successors.[3] So-called *coloni* existed from the beginning of Roman history, but they were not serfs. The earliest colonus was a peasant proprietor. Later the word *colonus* was used almost exclusively to designate a small tenant cultivating a plot of the *ager publicus* or of a patrician's estate. With the growth of Roman power, however, there came a great concentration of landed property; slaves took the place of freemen as cultivators of the fields, and the tenant-coloni disappeared except in outlying regions. But there was a return to the earlier conditions when the more peaceful policy of the Empire caused a shortage of slaves, and the estates of the nobles came once more to be cultivated by coloni. These

[1] "Étude sur l'histoire du colonat chez les Romains," in the *Revue historique de droit français et étranger*, vol. ii (1856), pp. 417-460; vol. iii (1857), pp. 209-246, 343-368.

[2] *Ibid.*, iii, p. 366.

[3] *Ibid.*, iii, pp. 223, 225 *et seq.*

tenants held short-term leases, usually five years in duration, after the expiration of which they were legally free to leave. In actual practice, however, the tenants ordinarily cultivated the same piece of land for a much longer period, for the proprietors offered them many inducements to stay on their leaseholds. Yet, neither a private proprietor [1] nor the *fiscus* [2] was permitted by law to retain a peasant by force after his lease had expired.

However, notwithstanding the encouragements given to tenant-coloni to remain on their holdings the stretches of deserted land continued to increase. Various expedients were tried to restore these lands to cultivation. Pertinax granted deserted land in full property to anyone who would guarantee to cultivate it.[3] Marcus Aurelius and several of his successors settled barbarians on abandoned land, not as serfs, indeed, but as military tenants. Similarly veterans of the legions were given liberal grants of land on the borders of the Empire. But nevertheless, the heavy taxes on the land caused tenants everywhere to desert their holdings as unprofitable and go to swell the city mob or else join the bands of vagabonds and highwaymen which infested the country.[4]

The most serious consequence of the *agri deserti* was the inability of the abandoned land to furnish the taxes on which the state had formerly relied; and with the increased expenses caused by the reorganization of the Empire by Diocletian, more revenue than ever was required. The old system of tax administration had left the collection of taxes to municipal magistrates known as *decaprotes* [5] who were

[1] *Cod. Just.*, iv, 65, 11.

[2] *Dig.*, xlix, 14, 3, 6.

[3] Herod., ii, 4, 12.

[4] Revillout, *op. cit.*, iii, 214.

[5] Literally, "the first ten."

responsible with their total wealth for the assessed amount. The system had formerly operated with conspicuous success. The state had received its revenues regularly and the *decaprotes* had been amply remunerated for their responsibility. But when the higher taxes of the tetrarchy had caused a rapid increase in the number of fields which were deserted, the *decaprotes* found themselves forced to make up the loss from the non-paying land out of their own wealth; and many of them were ruined. The ruin of the city magistrates, which increased rapidly, threatened to break down the whole municipal organization of the Empire, a result which could not but have the most disastrous consequences on the whole administrative system. To prevent this the emperors found it necessary to introduce certain changes in the method of tax collection, which brought about as one of its results the adscription of the peasantry to the soil.[1]

Constantine took several measures to relieve the burdens which were crushing the city magistrates. Municipal senators were no longer held responsible for each other's liabilities to the crown.[2] The responsibility for the taxes of deserted land was taken away from the city administration and placed on the proprietors of the land.[3] The city capitation tax, for which the senators had been responsible, was removed,[4] while the proprietors were made responsible for the taxes of the peasants on their own lands.[5] But if the landlords were not to be ruined by the taxes of their tenants, it was necessary to prevent the tenants leaving their estates. Hence the coloni were attached to the soil. "The govern-

[1] *Ibid.*, iii, p. 216.

[2] *Cod. Theod.*, xi, 7, 2 (319 A. D.).

[3] *Cod. Just.*, xi, 59, 1 and 2.

[4] *Cod. Just.*, xi, 49, 1 (313 A. D.).

[5] *Cod. Theod.*, xi, 7, 2.

ment could not make the possessor responsible for the tribute of his tenants without giving him at the same time the right to keep him; so that the perpetual colonate developed naturally out of this financial measure." [1]

The adscription of the colonus to the soil in the interests of taxation was not as violent an innovation in fiscal policy as at first would appear, for Revillout held that it was nothing but a more rigorous application of the earlier fiscal principle of *origo*.[2] The principle of *origo* entailed on each individual the obligation of participating in the taxes of the place of his birth. At first *origo* merely united the plebeian to his municipality and the city senator to his *curia*. Later there developed among the plebeians a number of religious colleges and corporations or gilds of the various crafts. These societies were made responsible for a series of public functions and in return for the performance of these duties, they received certain immunities from taxes. The corporations were responsible for the taxes of their members who were bound to them by the same ties of *origo* as those which united the senator to his *curia*. But in the middle Empire there seems to have been no obligation to remain in one's corporation or *curia*. The corporations and colleges were institutions apparently mutually advantageous to their members and the state and consequently they maintained themselves without the use of force. But during the half-century of anarchy which followed the death of Alexander Severus (234 A. D.) these institutions decayed rapidly. The senator abandoned his *curia* where the burdens were heavy, the plebeian left his college or corporation, and the tenant-colonus deserted his holding. Such a wholesale dis-

[1] Revillout, *op. cit.*, iii, p. 217. "Le gouvernement ne pouvait rendre le possesseur responsable du tribut de ses fermiers, sans lui donner en même temps le droit de les retenir; de sorte que le colonat perpétuel sortait naturellement de cette mesure financière."

[2] *Loc. cit.*

solution of the inner constitution of society in the Empire upon which the entire fiscal system had been based proved to be disastrous to the machinery of taxation. On that account, then, when the Empire was reorganized into the tetrarchy, the government decided both to restore the old principle of *origo* and to apply it in a very much more vigorous way than in the middle Empire. All classes were bound to the condition of their birth, the city senator to his *curia*, the government employees to their administrative bureaux, the soldiers to their legions, and the city plebeians to their colleges and corporations; and in a precisely similar way the tenant colonus was attached to his estate in perpetuity.[1] Later, to complete the stratification of society, villagers were attached to their villages[2] and agricultural slaves to the soil.[3] Thus the tax system was restored. The corporation could now be held responsible for the taxes of its members who were bound to it without the possibility of leaving, while the proprietor could be held for the taxes of his coloni who could now no longer desert their holdings. And as time went on the adscription of the coloni came to be more and more strictly enforced until they became in fact *servi terrae ipsius*.[4]

Hegel and Wallon had laid the foundation for the theory of administrative pressure, but the essay of Revillout brought the theory into the vanguard and profoundly influenced all subsequent theories. The earlier theories of the colonate had principally concerned themselves with the sources from which the serf-coloni of the Codes were derived; but the conditions which brought about legislation of Constantine and his successors had been almost wholly neglected. Re-

[1] *Ibid.*, iii, p. 222.

[2] *Cod. Theod.*, xi, 24, 1 and 6.

[3] *Cod. Just.*, xi, 48, 7.

[4] Revillout, *op. cit.*, iii, pp. 223 *et seq.*

villout, on the other hand, emphasized the circumstances which led up to the actual *adscriptio glebae* itself; but objections were soon raised that his treatment of the sources of the coloni were inadequate.[1] Revillout rejected the view that there had been a continuous development of earlier servile conditions, that barbarians were settled in the Empire as serfs, or that there had been a limited manumission of slaves. The source from which the serf-coloni were formed was the free tenantry on the great estates, he asserted.[2] But before a free tenantry can be accepted as the source of the coloni it is necessary to prove two facts. In the first place it must be shown that there existed a free tenantry on the *latifundia* in numbers sufficient to form the basis of the colonate. Secondly, proof must be offered that these peasants were already in a condition of hereditary dependence, for otherwise, it would have been easier to adapt a system of taxation to the condition of the population, rather than the condition of the population to the system of taxation. It is true that both these details received some consideration in Revillout's essay. The cessation af the importation of slaves, he said, rendered it necessary for proprietors to rely more and more on a free tenantry, and he cited passages in Varro, Columella, the younger Pliny, and the Digest which seemed to indicate the change.[3] And as concerns the second consideration, he argued that these tenants were held in a more or less stationary condition by a fiscal principle of *origo* similar to that which the Digest cited in regard to city plebeians who were members of corporations.[4] But in neither case are the texts which Revillout offered sufficient to do more than indicate the possibility of his conclusions. Consequently

[1] *Cf.* Heisterbergk, *Die Entstehung des Colonats*, pp. 33-38.

[2] Revillout, *op. cit.*, iii, pp. 209 *et seq.*

[3] *Ibid.*, ii, pp. 449-454.

[4] *Ibid.*, iii, pp. 217-218.

subsequent writers, after they had accepted Revillout's conclusions as to the importance which administrative pressure played in the formation of the colonate, attempted at the same time to throw more light upon the condition of the peasants who were converted into serf-coloni by the legislation of the late emperors.

The first writer to take up this problem was Serrigny, whose *Droit public et administratif romain* appeared in 1862.[1] Among the previous explanations of the sources of the serf-coloni the theory of Giraud, that the colonate was formed on one side by "la population libre dégénérée" and on the other by "la population servile améliorée" seemed to Serrigny to be the most acceptable.[2] But savants in Roman law, such as Savigny, while they recognized the attractiveness of such a simple solution of the problem, felt that the transformation of freemen and slaves into a common intermediate class was contrary to all the canons of Roman law without an express edict to that effect; and of such an edict there is not the slightest trace.

Serrigny, however, believed that he had found a solution to this difficulty which he said "would serve to make clear the origin of the colonate, a question which has appeared so obscure to so many eminent men but which to us appears easy."[3] Previous dissertations on the colonate had treated the coloni as if they were all of one class. In reality, said Serrigny, there were two classes, slave coloni and free coloni.[4] The distinction between the two was most plainly set forth by a law of Anastasius in the Justinian Code.

[1] *Cf.* vol. ii, pp. 386-426.

[2] Giraud, *Histoire du droit français*, 160-161; Serrigny, *op. cit.*, ii, p. 389.

[3] *Ibid.*, ii, p. 390. "... va nous servir pour éclairer l'origine du colonat, question qui a paru si obscure à tant d'hommes éminents, et qui nous semble facile."

[4] *Ibid.*, ii, p. 389.

Of the peasants (*agricolae*) some are *adscripticii* whose *peculia* belong to the lords, while others are coloni after a prescription of thirty years, who nevertheless remain free together with their property; yet the latter also are forced to cultivate the land and pay the *tributum*.[1]

Slave coloni were mentioned frequently in the Codes under the names *servi* and *censiti servi*, as well as *adscripticii*;[2] while free coloni are often specifically called *liberi*.[3] Their children likewise remained free but attached forever to the land which their fathers cultivated.[4] The free coloni were "slaves of the soil" indeed, but in their personal condition they were called "free born" (*ingenui*).[5]

With this distinction in mind Serrigny felt that it was considerably easier to trace the origin of the colonate. The source of the slave-colonate was the slave population of the great *latifundia*. From the time of the conquest of Carthage estates of great size commenced to develop in Italy which came to be cultivated by the enormous masses of the enslaved captives of Rome's foreign wars. But the harsh and pitiless system of Roman slavery soon proved itself to be as unprofitable as it was cruel; and Pliny could cry with reason, "*Latifundia perdidere Italiam.*"[6] Before long,

[1] *Cod. Just.*, xi, 48, 19. "Agricolarum alii adscripticii sunt, quorum peculia ad dominos pertinent, alii triginta annorum tempore coloni fiunt, liberi tamen cum rebus suis manent; atenim hi quoque et terram colere et tributum solvere coguntur."

[2] *E. g., Cod. Just.*, xi, 48, laws 3, 7 and 12.

[3] *E. g., Cod. Just.*, xi, 69, 1. "Si liber colonus vel colona libera... matrimonii jure copuletur."

[4] *Cod. Just.*, xi, 48, 23, 1. "Sancimus liberos colonorum esse quidem in perpetuum... liberos et nulla deteriori conditione praegravari;... sed semper terrae inhaereant, quam semel colendam patres eorum susceperunt."

[5] *Cod. Just.*, xi, 52, 1. "Licet condicione videantur ingenui, servi tamen terrae ipsius, cui nati sunt aestimentur."

[6] Serrigny, *op. cit.*, ii, p. 393.

however, masters who wished to make the most profit from their slaves introduced the practice of letting out plots of land to their slaves for rent, thus making the efforts of the slave himself responsible for his well-being. This system proved as lucrative to the proprietor as it was advantageous to the slave and Constantine and his successors, in their desire to further the interests of agriculture, legalized this condition in the slave-colonate.[1]

So far as the free coloni were concerned there were three sources from which they were derived. In the first place there were certain freemen who voluntarily became the coloni of the rich in order to escape military service and avoid the payment of the taxes. Previous writers had objected to this argument on the ground that it was contrary to Roman law for freemen to subject themselves to a servile condition,[2] but Serrigny emphasized the fact that the *liber colonus* was still absolutely free in his personal status, and consequently would not be affected by this law.

As a second source of the free colonate Serrigny brought in the barbarian settlements to which attention had already been directed by so many previous writers. As a third source, however, he introduced a new element which had hitherto escaped notice as a possible origin of the colonate. This was the freedman of inferior condition. The lowest class of freedmen were known as the *libertini dedititii*. They were former slaves who had been guilty of some misconduct before their emancipation[3] and who for that reason had become incapable of the rights of Roman citizenship. As freedmen they held exactly the same civil rights as the *dedititii* with certain additional obligations to their patron.[4]

[1] *Ibid.*, pp. 394, 403.

[2] *Cf. Dig.*, i, 5, 5, 1.

[3] Gaius, *Institutes*, i, 13.

[4] *Ibid.*, i, 31; iii, 75.

Like the barbarian *dedititii*, Serrigny maintained, the *libertini dedititii* were used as cultivators of the fields of their patrons in a semi-servile condition.[1] Somewhat more similar to the later free coloni were the *Latini Juniani*. These were freedmen who held an intermediate position between the *libertini dedititii* and the freedmen with full rights. Instead of receiving Roman citizenship with their manumission like the freedmen proper, they merely obtained the inferior rights of the Latins, and instead of having complete control over a part of their property as ordinary freedmen, all their property was in the possession of their patron as slaves' *peculia*. This class became very numerous during the Empire and Serrigny believed that they formed the principal source from which the later coloni were recruited. In actual practice, he said, the Junian Latins on the great estates were in exactly the same condition as the coloni after the legislation of the Codes.[2]

That the coloni from these various sources were by the third century already being very closely identified with the land is to be seen from the decision of Marcian, that "if anyone has bequeathed *inquilini* without the estates to which they are united the bequest is null and void," [3] and that of Ulpian, that "if anyone has not declared his *inquilinus* or colonus, he will be held accountable by census laws." [4] But the complete adscription of the coloni, according to Serrigny, did not come until the legislation of the fourth century. The force which brought about this final transformation was the all-powerful despotism of the imperial administration. The cause was the belief on the part of the emperors that the

[1] Serrigny, *op. cit.*, p. 400.

[2] *Ibid.*, p. 401.

[3] *Dig.*, XXX, 1, 112, *pr.* *Cf. supra*, pp. 31, 58.

[4] *Dig.*, L, 15, 4, 8. *Cf. supra*, p. 58.

inner decay in the Empire could only be checked by the complete immobilization of all classes of society from the aristocracy to all inferior orders in a rigid caste system. And so far as the coloni, as the most numerous of the inferior orders of society, were concerned, "the interest respectively of the proprietor and of the colonus, and the general interest led to this disposition, because, in the opinion of the legislator, it concerned the good culture of the land." [1]

Serrigny's main contribution to the development of the theories of the colonate lay in his emphasis on the distinction which existed between the free coloni and the *servi adscripticii,* the slaves attached to the soil. It was a distinction which had been made before, indeed, in discussions of the legal status of the coloni and the slaves of the late Empire as revealed by the Codes; but its importance had not been previously recognized in explanations of the origin of the colonate. It showed that the development of slave tenures on the *latifundia* in the second and third centuries did not lead, as Puchta had thought, to the colonate but to the slave adscripticiate; and it cleared the way to the conclusion that the coloni must be derived from a free and not a slave origin. Unfortunately, Serrigny's discussion of the sources from which the free colonate developed was not so satisfactory as his treatment of the origin of the slave adscripticiate. He mentioned three sources of origin, freemen who became coloni of the rich to avoid military services and taxation, barbarian *dedititii,* and freedmen of inferior grades. His first category, however, referred rather to clientage than to the colonate. The coloni were subject both to military service and taxation. In fact, after they had been legally attached to a lord's estate, the government found the work of

[1] Serrigny, *op. cit.*, p. 402. "L'intérêt respectif du propriétaire et du colon, et l'intérêt general . . . amenèrent cette disposition . . . parce qu'elle intéressait, dans l'opinion du législateur, la bonne culture des terres."

tax assessment and military enlistment considerably expedited. Coloni, as well as freemen, in the late Empire became clients of powerful patrons in order to evade the crushing burden of taxation and the distasteful wars [1] against northern barbarians. But clientage was a movement away from the colonate and not toward it. The descendants of the barbarian *dedititii,* as we have seen, may have formed one of the sources from which coloni were derived in the northern provinces; but their numbers were too small to make them a class of great significance. In Italy the freedmen, especially the large number of Junian Latins during the early Empire, must have formed an important element in the agricultural population. But the freedmen were not an hereditary class, for their children became *ingenui* (free born), and Serrigny made no effort to show that a permanent dependent class of the offspring of freedmen developed on the *latifundia* as small tenants of the rich. Serrigny's ideas as to the sources of the free colonate were suggestive, but much work still remained to be done to show that there existed a small tenantry on the *latifundia* in sufficient numbers and widely enough distributed throughout the Empire to have formed the basis of the serf-coloni. It was largely to the solution of this problem that the next two important writers, Rodbertus and Heisterbergk, directed their attention.

Rodbertus' essay appeared in 1864 in Hildebrand's newly founded *Jahrbücher für Nationalökonomie und Statistik.*[2] The previous discussion of the colonate had been largely confined to scholars in Roman law and ancient history. One group had been mainly concerned with formulating a theory which would be consistent with the principles of Roman law,

[1] *Cf.* Rostovtzeff, *Journal of Roman Studies*, vol. viii (1918), p. 31.

[2] "Zur Geschichte der agrarischen Entwickelung Roms unter den Kaisern, oder die Adscriptitier, Inquilinen, und Colonen." *Jahrbücher*, vol. ii (1864), pp. 206-268.

while the second group had attempted to link the colonate to other historical facts such as previous types of serfdom, barbarian settlements, or the general caste system of the late Empire. But no attempt had been made to relate the development of the colonate to general economic laws as set forth by the political economy of the day; and in this Rodbertus broke new ground.

The year before the essay of Rodbertus appeared Von Thünen published the complete edition of *Der Isolirte Staat*.[1] This was a highly abstract work in economic theory in which Von Thünen took a simple imaginary situation and then attempted to determine what conclusions could be validly drawn from it by deductive reasoning. He pictured a completely isolated community, in the center of which was a great city surrounded on all sides by a fertile plain cut by no navigable waterway. He then raised the question as to the forms in which agriculture would develop about the city, and the way that distance from the city would affect the utilization of the land. Around the city, he said, a series of concentric circles might be drawn, each circle including within its area the land devoted to a particular type of culture. In the central circle perishable and bulky products would be produced, such as market-garden produce and milk. Because of its favorable situation land would be more important than labor and consequently the most intensive culture would be profitable. In the outer circles transportable products like grain would be produced and the cultivation would become less intensive the more distant the district was from the city. Finally in the most distant circles the land would be used only for pasture or left waste.[2]

Rodbertus believed that such a condition as represented

[1] The first volume had been published in 1826.

[2] Rodbertus, *op. cit.*, pp. 221-222. *Cf.*, Von Thünen, *Der Isolirte Staat*, vol. i, pp. 1-5, 384 *et seq.*

by Von Thünen in his hypothetical state, actually existed in the case of Rome. During the Empire Italy formed the first circle which furnished the capital with garden produce and dairy products, while the provinces corresponded to the more distant circles of Von Thünen which supplied the city with grain. Consequently the land in Italy was intensively cultivated in small garden plots (*Zwerg-Parzellenwirtschaft*) while in the provinces the large-scale plantation system (*Latifundienwirtschaft*) was in force. This condition had not always existed in Italy, but had developed with the spread of Roman conquests throughout the world. During the Republic the slave-plantation system had held full sway in Italy and it was to this system rather than to the mere size of the estates that Pliny the Elder referred when he said that the *latifundia* had ruined Italy.[1] But many references point to the fact that in the early Empire the large-scale plantation system had been transformed into a small-sale intensive system and that Italian land had come to be devoted to the cultivation of garden produce and poultry.

Intensive methods of cultivation of the soil commenced to be used in Italy about the middle of the first century after Christ. Columella about 60 A. D. and Pliny the Elder twenty years later both described intensive cultivation in some detail,[2] and in addition Pliny mentioned the recent introduction of a harrow which improved tillage in no small degree.[3] Garden products, too, had been replacing grain for some time on Italian farms. Cato had placed grain as sixth in value in his list of profitable applications of the land, after garden products and meadow land,[4] while Colu-

[1] Plin., *N. H.*, xviii, 7. "... verumque confitentibus latifundia perdidere Italiam."

[2] Colum., *De R. R.*, ii, 12. Plin., *N. H.*, xviii, 49-53.

[3] Plin., *N. H.*, xviii, 48.

[4] Cato, *De Agric.*, i, 6.

mella stated that "we scarcely are able to remember in the greater part of Italy when grain yielded four-fold." [1] This was due not to any lack of fertility of Italian soil, said Rodbertus, but to the fact that only the poorest land was used for grain, all the good land being applied to garden products.[2] In the time of Varro the raising of poultry proved far more profitable than grain,[3] while close to Rome the cultivation of roses, lilies, and violets yielded good returns.[4] Numerous, likewise, were the references to the cultivation of vegetables and fruit trees, of meadows for the dairyman's cattle, and particularly olives and vines which were especially favored by the government with protective legislation. In fact, toward the close of the Republic, Italian agriculture had come to be so largely devoted to garden products that Varro could exclaim, "Is not Italy so covered with fruit trees that it seems one vast orchard?" [5]

References from classical writers, then, seemed to Rodbertus to bear out the theoretical principles of Von Thünen that intensive cultivation and the growing of garden crops were characteristic of Italy as *der erste Kreis* of the Empire. But what consequences did this change have on the system of cultivation on the great estates? Intensive cultivation and truck farming require the minute attention of a cultivator, who is directly interested in the gain or loss from his operations. To attempt to use slaves forced to work by the lash of the slave driver would be disastrous. "It is the very worst plan of all," said Pliny, "to have the land tilled

[1] Colum., *De R. R.*, iii, 3. "... frumenta majore quidem parte Italiae quando cum quarto responderint, vix meminisse possumus."

[2] Rodbertus, *op. cit.*, p. 218.

[3] Varro, *R. R.*, iii, 2.

[4] Varro, *R. R.*, i, 16; Plin., *N. H.*, xxi, 7.

[5] Varro, *R. R.*, i, 2. "Non arboribus consita Italia est, ut tota pomarium videatur?"

by slaves from the *ergastula*. . . . To cultivate land well is absolutely necessary, but to cultivate it in the highest style is mere extravagance, unless indeed the work is done by the hands of a man's own children, his tenant, or someone he is supporting." [1] Consequently Rodbertus believed that there was a change from the large-scale methods formerly in vogue on the *latifundia* to small-scale agriculture in which each cultivator tilled his own land and had a direct interest in the product which his land produced.[2] Further plausibility was added to this hypothesis by the fact that proprietors no longer lived on their estates and the administration of their slave-stewards was notably inefficient.[3] The *latifundia* system could only be maintained by leasing the land out to tenants, as Columella himself advised [4] for all regions except those close to Rome.

But where were tenants to be obtained? There was no native agricultural stock of free peasantry and the freedmen from the *familia rustica* were insufficient. Hence Rodbertus argued that slaves themselves must have been used as tenants, just as they had already been employed in the cities as agents on commission in booths and retail stores, and rent was paid in kind instead of money.[5] No text expressly described this change, Rodbertus admitted, yet he believed that the inferences from a number of classical references could lead to no other conclusion. Columella said that work rather than payments should be demanded from coloni,[6] a

[1] Plin., *N. H.*, xviii, 7. "Coli rura ab ergastulis pessumum est . . . Bene colere necessarium est, optime damnosum, praeterquam subole sua, colono, aut pascendis alioqui colente."

[2] Rodbertus, *op. cit.*, pp. 213, 219-220.

[3] Colum., *De R. R.*, i, 7.

[4] Colum., *loc. cit.*

[5] Rodbertus, *op. cit.*, p. 224.

[6] Colum., *De R. R.*, i, 7. "... avarius opus exigat quam pensiones."

statement which would be very unusual if the coloni had been freemen instead of slaves. The younger Pliny in one of his letters [1] referred to the coloni to whom his estate was leased in small plots. He also said that he had no slaves in chains on the estate. His slaves, then, Rodbertus argued, must have been the coloni who were cultivating his estate in small-scale intensive agriculture and whom he spoke of later as paying share-rent.[2] In the Digest there was frequent mention of land leased to slaves. Alfenus spoke of a proprietor "who had leased land to his slave to be cultivated and also gave him some cattle." [3] Ulpian mentioned a slave "who was on a plot of land like a colonus." [4] A slave-steward (*vilicus*) according to Paulus might cultivate a piece of land paying his master a fixed rent; [5] while another slave who farmed his land "not in the confidence of his master but for a rent, as coloni from outside are accustomed to do," [6] was cited by Scaevola as being in arrears in his rent. Finally Ulpian stated that the proprietors must declare their coloni and *inquilini* in the tax-returns, an obligation which obviously could not relate to freemen.[7] The coloni, then, in the opinion of Rodbertus were slaves cultivating their master's estate for a rent.[8]

The colonate was not yet at the time of the jurists of the Digest a legal institution, nor were the coloni attached to

[1] Plin., *Epist.*, iii, 19.

[2] *Ibid.*, ix, 37.

[3] *Dig.*, xv, 3, 16. "Quidam fundum colendum servo suo locaverat, et boves ei dederat, . . ."

[4] *Dig.*, xxxiii, 7, 12, 3. "Servus, qui quasi colonus in agro erat."

[5] *Dig.*, xxxiii, 7, 18, 4. ". . . pensionis certa quantitate . . . coleretur."

[6] *Dig.*, xxxiii. 7, 20, 1. ". . . non fide dominica sed mercede ut extranei coloni solent."

[7] *Dig.*, L, 15, 4, 8.

[8] Rodbertus, *op. cit.*, pp. 224-227.

the soil except in so far as they were compelled to do their master's bidding. There was, however, even at this time a class of slaves which was specifically attached to the soil. Proprietors in the days when political advancement depended largely on winning the favor of the Roman mob by lavish spectacles frequently fell in debt and were forced to mortgage their estates. When the estate was pledged as security for a debt the slaves were included as part of the security. They could not be emancipated nor could they be alienated in any way. These slaves, then, were attached to the soil and were known usually as *adscripticii*.[1] They might be slaves working on the estate in any capacity, and of course included the slave coloni and *inquilini* of the pledged estate. It was to these latter that Marcian referred when he said that *inquilini* could not be bequeathed from the estate to which they were attached.[2]

Both the conditions of the slave colonate and slave adscripticiate were favorable to the welfare of the slave. He had a home and permanent family relations and all the advantages which accrued from them. In fact the condition of the slave had been steadily improving from the beginning of the Empire. The wars of conquest which had glutted the market with the great masses of slaves largely ceased during the Empire, and with the sources of fresh supply of slaves thus cut off, it had been necessary for proprietors to breed and rear slaves on their own plantations. The greatest encouragements were given to slaves to marry and produce a numerous progeny. Columella said that the proprietors who had the most productive estates were those who kept native coloni on their lands,[3] while Scaevola re-

[1] *Ibid.*, pp. 232-233.

[2] *Dig.*, xxx, 1, 112, *pr.* Rodbertus, *op. cit.*, p. 228.

[3] Colum., i, 7. "Patrisfamilias felicissimum fundum esse, qui colonos indigenas haberet."

ported that there were estates in Africa where slaves of the third generation were kept.[1]

In brief, then, in the opinion of Rodbertus the agricultural development from the beginning of the Empire to the accession of Diocletian was somewhat as follows. The large-scale agriculture of the *latifundia* had changed to a small-scale cultivation with slaves as small tenants or coloni paying a rent in kind. The chained slave kept at night in the *ergastulum* had disappeared and his place had been taken by a native slave stock, which enjoyed certain moderate privileges and which in the case of the *adscripticii* on mortaged estates could not be separated from the soil. By the legislation of Diocletian the slave coloni and *adscripticii* were united into one class while their adscription to the soil became universal and definite.

There were two motives behind the reorganization in the agricultural conditions of the Empire effected by Diocletian and his successors. The first was to check the universal disintegration which was affecting all parts of the social organization of the Empire. To prevent this from going any further, membership in all classes of society from the administrative bureaux to the peasantry was made fixed and hereditary. The second motive for the adscription of the slaves to the land came about through the exigencies of taxation. The old *tributum* which had been levied on landowners, was changed by Diocletian into a land tax, called *jugatio*, and a capital tax, called *capitatio*[2] which was levied principally on slaves and cattle. The tax was assessed in units, called *juga* and *capita*, each unit being evaluated at 1000 *solidi*. As the assessment was made only once every ten or fifteen years on the occasion of the census, it was to the ad-

[1] *Dig.*, xxxiii, 7, 27, 1.

[2] Most authorities however regard this as a poll tax. *Cf.* Humbert, *Essai sur les finances chez les Romains*, vol. i, pp. 367-368.

vantage of the government that an estate once having received an assessed valuation should retain it unchanged until the next census period. The land units (*juga*) did not change, but the capital units (*capita*) were always in a state of flux, as the masters could sell their slaves or move them from one place to another. Therefore in order to make the *caput* as stable a unit as the *jugum* the slaves were attached to the soil.[1] The higher taxes which came with the tetrarchy were shifted as far as possible from the landlords to their tenant-slaves and at times the burden of these became so great as to cause wholesale flight on the part of the slaves. This was ruinous to the landlords, as they were held responsible for the taxes, and dangerous to the welfare of the state, so for centuries numerous edicts were issued punishing with the severest penalties the desertion from the land.[2]

The coloni thus legally bound to the soil were the old slave-coloni. Among the laws of Constantine there is no evidence that freemen were treated likewise. The first law which showed that men of free personal condition were attached to the soil was a constitution of Valentinian I and Valens of 366 A. D., which said that fugitive coloni and *inquilini,* whatever their personal condition, (*sine ullo condicionis discrimine*) should be returned to the estates from which they had fled.[3] In later laws this class of coloni were expressly called *liberi.*[4] The next problem then for Rodbertus to explain was the origin of the free coloni, the problem which heretofore had occupied the almost exclusive attention of former students of the colonate. However, with the slave colonate already formed, the development of

[1] Rodbertus, *op. cit.*, pp. 240-241.

[2] *Ibid.*, pp. 241-242.

[3] *Cod. Just.*, xi, 48, 6.

[4] *Cf. Cod. Just.*, xi, 48, 19; xi, 53, 1; xi, 69, 1.

a similar free status was not difficult to explain. The earliest source of free coloni, he held, was the emancipation of slave coloni already legally bound to the soil.[1] Their emancipation did not affect their adscription to the soil, but merely their personal status. They obtained the rights of freemen in relation to their master, who now became merely their patron and landlord, but their obligation to the government to remain as cultivators of the land remained unchanged. In 382 A. D. beggars and vagabonds [2] and in 409 A. D. the conquered barbarian tribe of the Scyrae [3] were added to the class of free coloni. Finally Anastasius (491-518 A. D.) ruled that all slave-coloni who remained on the same estate for thirty years should become free coloni.[4] In this way, Rodbertus concluded, the free colonate, attached to the soil, developed after the model of the earlier slave colonate, which had previously been legally established.[5]

The theory of Rodbertus differed strikingly from all those that had gone before. Most of his predecessors believed that the colonate had originated in the provinces, while Rodbertus found it in Italy; most of the earlier writers had

[1] Rodbertus, *op. cit.*, p. 258.

[2] *Cod. Theod.*, xiv, 18, 1.

[3] *Cod. Theod.*, v, 6 (4), 3.

[4] *Cod. Just.*, xi, 48, 19. "Agricolarum alii adscripticii sunt, quorum peculia ad dominos pertinent, alii triginta annorum tempore coloni fiunt liberi tamen cum rebus suis manent." Rodbertus' explanation of this passage is extremely forced. (Rodbertus, *op. cit.*, p. 262.) It rests on conceiving *agricolae* as slaves and in reading *liberi* with *fiunt* instead of *manent* which enables him to translate this passage as "others of the slave peasants through a prescription of thirty years are made free coloni." But the word *agricola* has no connotation in regard to personal status and to read *liberi* with *fiunt* instead of *manent* not only makes the last clause meaningless but destroys the contrast which the law makes between the *adscripticii*, whose *peculia* belong to their lords, and the coloni, who own their own property. For the generally accepted translation of this law see above page 99.

[5] *Op. cit.*, p. 264.

regarded the coloni as transformed freemen, while Rodbertus held that they were transformed slaves; and no one before had related the origin of the colonate to general laws of economic development. Despite its many errors and weaknesses the theory of Rodbertus is remarkably well-rounded and plausible. The difficulty which Revillout and Serrigny had found in proving that there was a class of free peasants large enough to form the basis of the colonate, Rodbertus avoided by tracing the colonate to slaves, the enormous number of whom at the beginning of the Empire was attested by numerous records of undoubted authenticity, Puchta, like Rodbertus, had derived the colonate from an origin in slavery, but his theory had given way because of the lack of evidence of legislation permitting a manumission of slaves as coloni instead of ordinary freedmen who had rights of freedom of movement. But Rodbertus held such legislation unnecessary, as the colonate in his opinion was simply the adscription of the slave to the soil. Once bound to the soil the slave-colonus might indeed be freed to become a free colonus, but the old manumission laws were perfectly capable of legalizing such an emancipation. Finally, like his predecessors of the administrative pressure school, Rodbertus believed that the legislation of the colonate came about through the exigencies of taxation and through the need of stabilization in an era of universal disintegration; and this arbitrary treatment of the agricultural population was made so much the easier by the fact that the peasants were slaves and not freemen.

The economic historian has frequently been criticised for his neglect of historical texts in his search for broad historical generalizations; and this criticism is particularly applicable to Rodbertus.[1] The theory of Rodbertus rests al-

[1] *Cf.* Westermann, "On the Sources and Methods of Research in Economic History," *Pol. Sci. Quart.*, xxxvii (1922), p. 70.

together on two assumptions, first, that there was a change from large-scale to small-scale agriculture in Italy which caused the slave gang to be supplanted by the small tenant; and, secondly, that these small tenants, or "*coloni*" as they were called, were slaves. If these assumptions are false, the whole superstructure, which Rodbertus reared on them as a base, falls to the ground. There can be no doubt that the second assumption is absolutely incorrect, for the word *colonus* from the earliest times to the age of Justinian was never used to indicate a slave. The jurists of the second and third centuries represented the colonus as a tenant who held a time lease and paid a money rent [1] and who was absolutely free to leave his leasehold at the expiration of his contract.[2] Against the multitude of references which show that the colonus was a freeman, Rodbertus offered two texts which he claimed led to the opposite conclusion. Columella said that a proprietor should be more solicitous in requiring work than payments from his coloni,[3] and Pliny the Younger leased out his estate to coloni on share rent.[4] These references probably indicate that the condition of the tenant-colonus was not as independent in practice as the decisions in the Digest seem to imply. But it is ridiculous to deduce the conclusion that the colonus was a slave from these passages in Columella and Pliny. Rodbertus, in addition, pointed out several decisions in the Digest which showed that slaves were used as tenants on the estates of their

[1] *Cf. Dig.*, xix, 2, 14. "Qui ad certum tempus conducit . . . colonus est." *Dig.*, xix, 2, 24, 2. "Si . . . fundus in quinquennium pensionibus locatus sit, potest dominus, si deseruerit . . . fundi culturam colonus, vel inquilinus cum eis statim agere." *Dig.*, xix, 2, 25, 6. "Colonus, qui ad numeratam pecuniam conduxit."

[2] *Dig.*, xix, 2, 25, 2. "Quin liceat colono vel inquilino relinquere conductionem, nulla dubitatio est."

[3] Colum., *De R. R.*, i, 7. ". . . avarius opus exigat, quam pensiones."

[4] Plin., *Epist.*, ix, 37. ". . . si non nummo sed partibus locem."

masters. A tenant-slave, however, was never called a colonus but rather he was spoken of as a "slave who was on the land *like a colonus*," [1] an expression which attests in the clearest possible way that *colonus* and *servus* were not synonymous. Puchta's attempt to trace the colonate to an origin in slavery failed because of his inability to find any legislation which legalized the transformation of slaves into coloni by a limited manumission. Rodbertus thought that the legislation of Constantine and his successors governing the adscription of the coloni to the soil was the legislation sought. But his explanation likewise failed because he could not satisfactorily identify the coloni, who were the subjects of the legislation, with the slaves whom he regarded as the basic material from which the colonate was formed.[2]

The other assumption upon which the theory of Rodbertus was based was that there had been a change from large-scale to small-scale agriculture in Italy in accordance to the law of Von Thünen. This hypothesis was made the special point of attack by Heisterbergk, the next important writer to take up the problem of the colonate.[3] There is no direct documentary evidence, said Heisterbergk, that large-scale agriculture was supplanted by a small-scale intensive system, so the validity of Rodbertus' assumption rests altogether on indirect indications of such a transformation.[4]

[1] *Dig.*, xxxiii, 7, 12, 3. "Servus, qui *quasi colonus* in agro erat."

[2] Rodbertus' identification of the *adscripticii* with slaves on mortgaged estates who could not be sold until the land was freed from mortgage is an interesting conjecture, but it is supported by no documentary evidence. In the Codes the *adscripticii* referred to slaves as well as coloni attached to the soil, so the term *adscripticii*, unlike *coloni*, might very well have been applied to slaves. But the condition of the slaves on mortgaged estates was only a temporary one, lasting until the debt was paid or the mortgage foreclosed, so that even if this class had been a numerous one, which is not likely, it could have had little influence on the development of the later slave adscripticiate.

[3] *Die Entstehung des Colonats* (Leipzig, 1876).

[4] *Ibid.*, p. 43.

A change from an extensive system of agriculture to the intensive garden-culture of the central Von Thünen circle would require a great increase in the number of the agricultural population. But numerous references point to the fact that the population of Italy, instead of increasing during the late Republic and the Empire, declined rapidly. From the time of the second Punic war Rome was engaged in a succession of wars, all of which cost her dearly in the lives of her citizens. Even more sanguinary were the fierce civil wars and the proscriptions which followed them. In 125 B. C. Livy stated that there were 394,736 citizens[1] while the census of 46 B. C. showed that the number had been reduced to 150,000.[2] Likewise the policy of colonizing foreign provinces with Italian settlers which had been instituted by Caius Gracchus further drained the population of the peninsula. Caesar complained of the "fearful lack of population"[3] and during the Empire every inducement possible was given to encourage marriage and large families. But the population continued to decline and everywhere in Italy, cities became villages, lands were deserted, and it finally became necessary to import barbarians to settle and cultivate the waste lands. Hence these numerous records show that Italy was the least fitted of all lands in the Empire to assume the role of Von Thünen's innermost circle around the central city. The strength of the Italian population was utilized in the army and in foreign colonies to maintain the Roman hegemony throughout the provinces, rather than intensive agriculture devoted to supplying the capital with food products.[4]

[1] Liv., *Epit.*, lx.

[2] Liv., *Epit.*, cxv. This census under Caesar is apparently discarded by competent scholars. *Cf.* Frank, *Cl. Phil.*, vol. xix (1924), p. 334.

[3] Dio., xliii, 25. "δεινὴ ὀλιγανθρωπία."

[4] Heisterbergk, *op. cit.*, pp. 45-51.

Rodbertus, it is true, believed that the serf-coloni were derived from slaves rather than freemen; but there had been a similar decline in the slave population of Italy. The savage slave revolts in the last century of the Republic and the massacre of the captives which followed their suppression caused the death of thousands of slaves. With the beginning of the Empire and the new laws permitting informal manumission, slaves were freed in such great numbers that legislation had to be passed to check it.[1] At the same time the cessation of wars of conquest which came with the Empire caused a marked decline in the new supplies of slaves. Consequently instead of the increase of slaves which would have been necessary to have made possible the change from intensive cultivation to the *Parcellen-und-Gartenwirtschaft,* all records point to a steady diminution of the slave population of Italy.[2]

The second objection which Heisterbergk raised against the theory of Rodbertus was the inclusion of all Italy as the garden-land in the central circle of Von Thünen. In reality on account of the mountains and the slowness of land transportation several of the provinces could market their products in Rome more easily than distant parts of Italy. Fresh figs could be obtained from Africa,[3] which would have been impossible from certain regions of Italy. Another weakness of this assumption of Rodbertus lay in his extraordinary exaggeration of the consuming power of the population of Rome. No city, ancient or modern, has ever been large enough to require an intensively cultivated market-garden area the size of Italy. No doubt certain districts close to Rome were devoted to market-gardens, notwithstanding the

[1] Sueton., *Octav.*, 40.

[2] Heisterbergk, *op. cit.*, pp. 52-54.

[3] Plin., *N. H.*, xv, 20.

known lack of fertility of Latium.[1] But the population of this comparatively insignificant area devoted to market gardening was far too small to form the basis of the serf-colonate of the late Empire, at a time, too, when the capital was moved first to Nicomedia and later to Constantinople.[2]

But the principal weakness of the theory of Rodbertus lay in his failure to account for the development of the colonate in the provinces. The causes which Rodbertus believed operated on the garden land in Italy to bring about small-scale agriculture and the colonate were not effective in the distant grain lands of the provinces, where extensive systems of agriculture were still maintained. Yet the Codes present direct and unmistakable evidence that the colonate existed in the provinces as well as in Italy. In fact, it is Heisterbergk's central thesis that, contrary to the theory of Rodbertus, the colonate developed first in the provinces and only appeared in Italy when conditions there became similar to those in the provinces.

Pliny's often quoted statement, "*latifundia perdidere Italiam,*" was interpreted by Rodbertus to mean that the large-scale production of the *latifundia* had ruined Italy and resulted in a change from the extensive agriculture of slave gangs to the intensive agriculture of slave tenants.[3] But Heisterbergk claimed that what Pliny meant by his statement was not that the form of cultivation of the *latifundia* had ruined Italy, but rather that the *latifundia* were so large that they could not be cultivated by their owners and had been allowed to develop into enormous areas of deserted land. Columella complained of the same evil,[4] but the *latifundia* continued to develop as great pastures, hunting-

[1] *Cf.* Seneca, *Epist. Moral.*, 87, 7.

[2] Heisterbergk, *op. cit.*, pp. 56-61.

[3] Rodbertus, *op. cit.*, p. 208.

[4] *De Re Rust.*, i, 3.

lands, and parks. The motive for the organization of the *latifundia* was not an economic one and the size of a man's estate was not limited, as Columella advised, by considerations of profit and efficient utilization. It was the pride, arrogance, and reckless extravagance of the newly rich which caused the thoughtless heaping up of possessions, until single men "possessed the territories of whole nations which they could not traverse on horseback (in a day)."[1] The enormous incomes of these landlords were obtained from the spoils of war and provincial administration or from lucrative contracts for farming taxes. Their Italian estates were used merely as means of display or as hunting preserves which neither necessity nor inclination caused them to put in cultivation.[2]

In the provinces, likewise, there was the same concentration of lands in the hands of a few possessors. In fact the *latifundia* were even more extensive there than in Italy. "Six lords possessed the half of Africa when Nero killed them," said Pliny.[3] Yet there was a fundamental difference between the formation of the *latifundia* in Italy and the provinces, which caused the former to be of a wholly uneconomic character and led to the decay and ruin of Italian agriculture, while, in the latter, it maintained or brought about small-scale cultivation on the *latifundia* and eventually the colonate. This fundamental difference—which is the keystone of the theory of Heisterbergk—was the taxability (*Steuerpflichtigkeit*) or non-taxability of the land.[4]

In Italy up until the time of the Gracchan movement the

[1] *Ibid., loc. cit.* "... possident fines gentium quos ne circumire equis quidem valent."

[2] Heisterbergk, *op. cit.*, pp. 64-68.

[3] Plin., *N. H.*, xviii, 7. "... sex domini semissem Africae possidebant, cum eos interfecit Nero."

[4] Heisterbergk, *op. cit.*, p. 68.

greater part of the land was *ager publicus*. For the use of this land a *vectigal* was at least nominally paid. The Gracchan proposals provided that the *vectigal* should be paid by the new possessors, but the tribune of the aristocratic party, in order to draw support away from the reform movement, proposed that land should be granted to settlers free from the *vectigal*. After the fall of Caius and the complete victory of the aristocratic party, in order to remove the danger of future agrarian reforms the *ager publicus* was wholly relieved of the obligation to pay the *vectigal*[1] and the Roman public domain became the private property of its former lessees. As the *tributum civium*, a general property tax,[2] had been abolished in 167 B. C., the Italian land paid neither taxes nor rents to the state from the time of the failure of the Gracchan reform to the introduction of the *tributum provinciale* into Italy by Diocletian.

The exemption of Italian lands from taxation was followed by consequences far more important in the agricultural development of Italy than the hypothetical laws of Von Thünen.[3] It removed the necessity for serious cultivation of the land and at the same time greatly favored the growth of *latifundia*. As military service in the constant wars was keeping the small possessors away from their lands, it was comparatively easy for wealthy and influential Romans to absorb enormous tracts of land into single estates; and these were used for parks, hunting, and pasturage while the place of the ousted free cultivator was taken by the slave-herdsman or caretaker. In the provinces, on the other hand, a different condition obtained. Since the owner of provincial estates must pay heavy taxes, he could not afford to use his lands as pleasure estates or hunting grounds, but was com-

[1] Appian, *Bel. Civ.*, i, 27.

[2] *Cf.* Seligman, *Essays in Taxation*, 9th ed., p. 35.

[3] Heisterbergk, *op. cit.*, pp. 71-72.

pelled to keep the land in cultivation, at least to the extent of providing a product sufficient to pay the provincial tribute and to support the population of the estate.[1]

In Italy the population of the *latifundia* was largely composed of slaves, but it is doubtful whether there were many slaves working on the provincial estates. Slaves were always in great demand at Rome, and, as the capital controlled the slave market, few slaves found their way to the provinces. Furthermore, since the provincial tribute became due immediately after the conquest, the owners of the estates could not wait to import a sufficient slave personnel to cultivate their lands, but found it most practicable to utilize the native peasantry as their tenants. So, while the development of *latifundia* on the tax-free land of Italy had meant the expropriation of the small possessor, on the taxable lands of the provinces, on the other hand, the development of *latifundia* was only possible through the retention of the indigenous agricultural population on the land as small tenants.[2]

The provincial tenant farmers cultivating the lands of a Roman overlord were probably in a condition of considerable dependence. They were not coloni, indeed, in the later sense of the word, but it needed only the immobilization resulting from centuries of custom and hereditary transmission (*Vererbung*) to crystallize their condition within the hard and fast limits of the serf-colonate.[3] Columella said that the great estates were cultivated by two classes, coloni and slaves.[4] The slaves were most advantageously used close to Rome, where the personal supervision of the

[1] *Ibid.*, p. 79.

[2] *Ibid.*, p. 80.

[3] *Ibid.*, p. 81.

[4] Colum., *De R. R.*, i, 7. "Hi vel coloni, vel servi sunt soluti aut vincti."

landlords was possible, while on distant grain lands—and here Heisterbergk believed that Columella was referring to the provinces—coloni were preferable.[1] In another place Columella again referred to the two classes who were to be found on the *latifundia* as slaves and "citizens in personal obligations" (*nexus civium*).[2] These latter must again have been the coloni in the provinces, Heisterbergk affirmed, and the word *nexus* (personal obligation) he believed showed that the coloni were in a condition of permanent dependence (*ein dauerndes Abhängigkeitsverhältniss*).[3] The dependent condition of the peasants is shown in still another place in Columella, where the proprietor was advised to demand work more insistently than payments from his coloni, "for this is both less offensive to them and in the long run is of greater advantage; for where the land is carefully cultivated it generally affords a profit and never a loss, so that the colonus does not dare to ask for an abatement of his rent."[4]

[1] Colum., *De R. R.*, i, 7. "In longinquis tamen fundis... quum omne genus agri tolerabilius sit sub liberis colonis, quam sub villicis servis habere, tum praecipue frumentarium." *Cf.* Heisterbergk, *op. cit.*, p. 85.

[2] Colum., *De R. R.*, i, 3. "...occupatos nexu civium et ergastulis tenent."

[3] Heisterbergk, *op. cit.*, p. 82. Heisterbergk's identification of those in the *nexus civium* with the provincial coloni is extremely questionable. If the provincial coloni were natives, as Heisterbergk assumes with reason, they were not *cives* in the time of Columella, a century and a half before Caracalla's Edict, as indeed most of them would not be thereafter. Varro expressly defined the citizens in the *nexus* as debtors working out their debt. *Cf.* Varro, *Lin. Lat.*, vii, 105. "Liber qui suas operas in servitutem pro pecunia quam debet dat, dum solveret, *nexus* vocatur, ut ab aere obaeratus." Both Columella and Varro were undoubtedly referring to Italian conditions, and the very passage in Columella (*De Re Rust.*, i, 3) which Heisterbergk used here (p. 82) as a reference to conditions in the provinces he had cited earlier (p. 64) to illustrate the evils of the *latifundia* in Italy.

[4] Colum., *De R. R.*, i, 7. "Avarius opus exigat, quam pensiones, quoniam et minus id offendit et tamen in universum magis prodest; nam ubi sedulo colitur ager, plerumque compendium, nunquam detrimentum affert, eoque remissionem colonus petere non audet."

Heisterbergk held that this passage illustrates the very considerable amount of oversight and control exercised by the landlord over his coloni; if the provincial peasants did not prove industrious and faithful tenants to their Roman overlords, they might be driven from their ancestral homes, just as had taken place in the case of their fellow peasants in Italy.[1]

The taxability of provincial land was the general cause which insured the cultivation of the land in the provinces. The next question, then, which Heisterbergk raised was the kind of taxation which would force proprietors to cultivate the land in the most careful way. In some provinces taxes were paid in kind and in others in money.[2] In provinces where the tax was paid in money it would be possible for a proprietor to use his provincial possessions as summer pleasure estates and pay the taxes out of his other resources. But if the tax were payable only in kind he would be compelled to keep the land in cultivation in order to furnish his assigned requisition. In the grain provinces, where the kind and quantity of the product were both previously determined by the government, the proprietor had small choice in the matter. However little he might be inclined to agriculture, he must at least provide for a thorough enough cultivation of the land to satisfy the demands of Rome and to support the agricultural population.

Hence it was in the grain provinces, particularly in Africa, Egypt, and Spain, that Heisterbergk believed that the colonate first developed.[3] The amounts of grain which these

[1] Heisterbergk, *op. cit.*, p. 85.

[2] Hyginus, *De Limit. Const.*, p. 205, ed. Lachmann. "Agri vectigales multas habent constitutiones. In quibus provinciis fructus partem praestant certam, alii quintas, alii septimas, alii pecuniam, et hoc per soli aestimationem."

[3] Heisterbergk, *op. cit.*, p. 99.

provinces furnished to Rome were enormous. Josephus said that Africa provided the city population of Rome with enough grain for eight months and Egypt with enough for four;[1] Aurelius Victor stated that Egypt during the reign of Augustus furnished yearly 20,000,000 *modii* of grain;[2] while Strabo related that Spain exported almost as much wheat as Africa.[3] There was no appreciable number of slaves in these provinces and there are no records of barbarian settlements; therefore Heisterbergk concluded that the land must have been cultivated by the native peasantry.[4] The land of Africa, Spain and Egypt was very fertile and was able to support a very large population in addition to providing for the requisitions of the capital. In Byzacium, a fertile district of Africa, grain yielded a hundred and fifty-fold in the time of Pliny, while Leontium in Sicily, Baetica in Spain, and Egypt produced a hundred-fold.[5] Rodbertus' conjecture that Italy was the original home of the colonate Heisterbergk had held impossible because it lacked sufficient population to make possible the change to small-scale agriculture. But the grain provinces were densely populated. Egypt, exclusive of Alexandria, had a population of 7,500,000[6] and had a birth rate as great as its death rate, a phenomenon which appeared marvelous to Pliny.[7] Frontinus in the first century[8] and Herodian in

[1] *Bel. Jud.*, ii, 16, 4.

[2] *Epit.*, i, 6.

[3] Strabo, iii, 2, 6. *Cf.* Justinus, xliv, 1.

[4] Heisterbergk, *op. cit.*, p. 105.

[5] Plin., *N. H.*, xviii, 21.

[6] Josephus, *Bell. Jud.*, ii, 16, 4.

[7] Pliny, *N. H.*, vii, 33. *Cf.* Simkhovitch, *Pol. Sci. Quart.*, xxxi (1916), pp. 232, 233.

[8] *De Controv. Agror.*, p. 53, ed. Lachmann. "Habent autem in saltibus privati non exiguum populum plebeium, et vicos circa villam in modum municipionum."

the third [1] both mention the large agricultural population of Africa. The peasants were spoken of as a *populum plebeium* who lived in villages around the lord's villa, by Frontinus,[2] and a *plebs rusticana* by Julius Capitolinus,[3] expressions which indicate that they were a free tenantry dwelling on the enormous *latifundia* of the rich. "But small-scale production on the *latifundia,* free condition, and actual strong dependence of the agricultural population applied to this work are the characteristics of the colonate." [4]

The grain provinces were the real home of the colonate, but the colonate developed to a greater or less extent in all the provinces wherever the land was taxable. The taxability of the land was everywhere the fundamental cause creating the colonate, but the development of the colonate was considerably affected by the different treatment which different provinces received after the Roman conquest. In some provinces the Roman conquest made no important change in the economic condition of the peasantry, as Roman suzerainty meant little more than a change in the tax administration. In these provinces there was a continuity in the economic development of the province which was only slightly affected by the Roman conquest. In others, however, the Roman conquest led to a complete change in ownership of the land, and, where the conquest was followed by a considerable Italian colonization, the condition of the agricultural population as well was materially modified; so that in these provinces there was a complete break between the earlier economic conditions and the later.

[1] vii, 4. "*φύσει πολυάνθρωπος οὖσα ἡ Λιβύη πόλλους εἶχε τοὺς τὴν γὴν γεωργοῦντας.*"

[2] Frontinus, *loc. cit.*

[3] *Gord.*, 7.

[4] Heisterbergk, *op. cit.*, p. 118. "Kleinwirtschaftlicher Betrieb auf den Latifundien, freier Stand und thatsächliche strenge Abhängigkeit der zu diesem Betriebe verwendeten Landbevölkerung bilden aber die Merkmale des Colonats."

Egypt was an example of a province of the first type. The Roman conquest was merely a change of foreign overlords, the Roman emperors, represented by the prefects, being substituted for the Ptolemies. There were no Roman colonies, and economic conditions within the province were little affected by the change of masters. If the colonate existed in Egypt before the Roman conquest, as the references offered by Rudorff seem to imply, then it no doubt continued to exist after Egypt had become a Roman province. In this case the taxability of the Egyptian land, instead of creating the colonate, merely insured its continued existence.[1] Africa, on the other hand, was an example of a province in which the economic conditions were fundamentally altered by the Roman conquest. Land was sold at auction or leased to contractors and numerous Roman colonies were established. The taxability of the African land in this case was the efficient cause which created the colonate, for even if a Carthaginian colonate had existed, it would have been altogether blotted out by the Roman conquest. Similar to Africa were Spain, Gaul, and Illyria, where numerous Roman colonies considerably altered earlier conditions on the land. The colonate here was a new creation after the conquest and not merely a survival of the previous condition of the peasantry. But in both types of provinces the taxability of the land was "the permanent and indispensable condition" (*die feststehende und unerlässliche Bedingung*) either for the maintenance of a previously existing semi-servile tenantry or else for the formation of a new class which finally developed into the colonate of the Codes.[2]

The actual adscription of the colonus to the soil came about through the legislation of the late Empire. During

[1] *Ibid.*, pp. 123, 136.

[2] *Ibid.*, p. 136.

the greater part of Roman history a strong distinction had been maintained between the Roman citizen and the provincial and between Italy and the provinces. But this distinction was gradually weakened in the course of time by grants of citizenship to certain provincial districts and by the Edict of Caracalla in 212 A. D. The final equalization between Italy and the provinces came with the introduction of the *tributum provinciale* into Italy by Diocletian. But the provincial colonate which had slowly evolved as a result of centuries of taxation in the provinces could not be created in Italy in a day merely by applying the provincial land tax. With the removal of the capital of the Empire to Constantinople, Egyptian grain was sent there instead of to Rome and African grain proved inadequate to supply the needs of Italy. It was necessary, therefore, that Italy develop her own agricultural population so that she might become as far as possible self-supporting. So the colonate legislation was formulated in order to create the colonate in Italy and to make the provincial colonate uniform throughout the Empire.[1] At the same time the enormously heavy taxation of the tetrarchy made such demands on the provinces that the tenant-colonate, which had been developed by the moderate taxation of the early Empire, threatened to break down through the wholesale desertion of the tenants. Hence it was necessary everywhere to tie the colonus to the soil and to enforce the adscription by repeated imperial edicts. In parts of the Empire where the land was still cultivated by slaves they were bound to the soil in exactly the same way as the coloni; and where the land had no cultivators at all, either slave or free, as in some parts of Italy where centuries of tax exemption had allowed the land to remain a waste or on the northern frontier constantly

[1] *Ibid.*, p. 143.

ravaged by border warfare, barbarians were brought in and settled in the same condition.[1]

The earlier writers of the administrative pressure school had presented an explanation of considerable plausibility for the adscription of the coloni to the soil; but their treatment of the sources from which the coloni sprung was decidedly inadequate. Rodbertus had attempted to remedy this defect and offered a theory which gave an apparently satisfactory explanation both of the origin of the colonate in Italy and of the source of the coloni. But the theory of Rodbertus was based on such inadequate documentary foundation that it found little favor; and while it offered a possible explanation of the colonate in Italy, it did not account for the origin of the colonate in the provinces. Heisterbergk, however, in his outline of the development of the colonate, suggested as the source of the coloni a class in the population of the Empire which undoubtedly was adequate to serve as the basis for the colonate in the provinces. The agricultural population of the conquered lands incorporated into the Roman Empire as provinces was very large and the fact that they were Roman tributaries made it extremely probable that they were in a condition of considerable dependence in relation to their Roman overlords. Unfortunately, at the time that Heisterbergk wrote his essay very little was known about the economic condition of the provincial peasantry. The Latin writers whose works are extant today had passed over them in almost complete silence. Aside from a few inconclusive references, like the Edict of Tiberius Julius Alexander, the only really valuable text was the passage in Frontinus which said that "private proprietors had on their estates a numerous plebeian population, and villages about the villa in the manner of fortifications."[2] The conclusions of

[1] *Ibid.*, p. 144.

[2] Frontin., *De Controv. Agror.*, p. 53, ed. Lachmann. "Habent autem in saltibus privati non exiguum populum plebeium et vicos circa villam in modum munitionum."

Heisterbergk in regard to the provincial peasantry, therefore, were rather of the nature of clever conjectures than the interpretation of adequate source material, and contemporaries might well have called them top-heavy. Hence it is all the more remarkable that soon after the publication of Heisterbergk's treatise a series of inscriptions and papyri were discovered in the two leading grain provinces, Africa and Egypt, which in the main bore out Heisterbergk's assumptions in regard to the condition of the cultivators of the provincial *latifundia.*

Much credit is due to Heisterbergk for the keenness of his vision in regard to the provinces; but as much cannot be said about his treatment of Italy, nor in favor of the cause which he thought brought about a strong contrast between Italy and the provinces in the development of the colonate. His assumption that a numerous dependent agricultural population existed on provincial *latifundia* was fully borne out by source material subsequently discovered. But the cause which he believed brought about this condition, the taxability of provincial land, is open to serious question; and when he was logically led to deny the existence of a small peasantry in Italy, because of the exemption of Italian lands from taxation, his conclusion proved absolutely false. There is not the slightest vestige of a doubt that coloni, as small tenant-farmers, existed in Italy during the early Empire. Columella devoted a chapter to the treatment of coloni,[1] and Columella was writing for Italians, not for provincials.[2] Pliny the Younger's estates in northern Italy had no chained slaves on them[3] but were cultivated by coloni;[4] and the Digest is filled with references to coloni.[5]

[1] Colum., *De R. R.*, i, 7.

[2] *Ibid.*, i, *praef.*

[3] Plin., *Epist.*, iii, 19.

[4] *Ibid.*, ix, 37; x, 8.

[5] For the complete list of references to the coloni in Italy, see Bolkestein, *De Colonatu Romano*, pp. 96-111.

Heisterbergk's assertions that Italian *latifundia* were all pleasure estates is as much an overstatement as the assumption of Rodbertus that land in Italy was principally devoted to market-gardening. The exemption of the Italian land from taxation made it possible, indeed, for the wealthy classes to own large parks and hunting grounds, but it was also an inducement to thrifty landlords to make a profit out of land which did not have to pay out a large share of its products as taxes. Such landlords were just as anxious to get tenants as the provincial magnates. The exemption from land taxes which Italy enjoyed had probably a considerably greater effect in favoring the growth of the small peasantry than preventing it, as Heisterbergk believed.

The difference between the economic conditions in the Italian *latifundia* and those in the provinces was not nearly so great as Heisterbergk had maintained, and the taxability or non-taxability of the land was not the distinguishing characteristic; yet there is no doubt that a difference between the two did exist in the early Empire. It was not always easy to get tenants on the Italian *latifundia*, as Pliny the Younger had found,[1] and vast stretches of Italian land lay waste and deserted. The Italian population was steadily declining while in the grain provinces of Egypt and Africa the population held its own. The reason that it was more difficult to maintain a strong farmer class in Italy than in certain provinces was, as we shall see later, the fact that the land in Italy had become almost completely exhausted by the beginning of the Empire, while the provincial land still possessed a high degree of fertility. Rodbertus in his attempt to prove the market-garden character of Italian land made use of a statement of Columella which said that "we are scarcely able to remember when grain yielded four-

[1] *Epist.*, x, 8.

fold in the greater part of Italy."[1] The conclusion that Rodbertus drew from this statement was that only sterile land was used for grain, as all the better grades of land were devoted to garden products.[2] But this observation of Columella, when interpreted in the light of numerous other contemporary references, shows rather that arable land in many parts of Italy had reached such a stage of exhaustion that it was becoming almost impossible to keep the Italian peasants on the soil.[3] Africa, Egypt, and Spain, however, were still unexhausted in the first century, and, although Pliny's accounts of land yielding one hundred and one hundred and fifty-fold[4] were doubtless exaggerated, they indicate that at least as compared to Italy these provinces were very fertile and could keep their agricultural population on the land without difficulty. The difference between Italy and the provinces was a question of fertility, not of taxability. Italian lands were deserted, despite the fact that they were tax-free, because they were too unproductive in many regions to enable a peasant to make a livelihood. The lands of the grain provinces, on the other hand, because of their fertility maintained a teeming population, even though they were compelled to ship to Rome a tribute amounting to one-tenth to one-fifth of their gross produce.

The foundations of the theory of administrative pressure had been laid by Hegel and Wallon in 1847, and in the next thirty years it had been developed into a well-rounded theory by the writings of Revillout, Serrigny, Rodbertus, and Heisterbergk. In addition to these writers the theory was

[1] Colum., iii, 3. "Nam frumenta majore quidem parte Italiae quando cum quarto responderint, vix meminisse possumus."

[2] Rodbertus, *op. cit.*, p. 218. *Cf. supra*, p. 106.

[3] *Cf.* Simkhovitch, "Rome's Fall Reconsidered," *Pol. Sci. Quart.*, xxxi (1916), pp. 211, 215.

[4] Plin., *N. H.*, xviii, 21.

advocated in brief form by Kuhn and Garsonnet in the same period; and while no new material was presented in their writings, their statement of the theory is worthy of mention. To Kuhn [1] most of the discussion in regard to the origin of the colonate seemed beside the point. Many factors, he said, may have contributed to the historical development of the peasantry in the direction of serfdom in various parts of the realm, such as the settlement of barbarians in northern provinces. But for the Empire as a whole one factor alone was able to account for the origin of the serf-colonate as a universal institution, without the aid of any accessory conditions. That factor was the application of the total force of a despotic government to check the general disintegration which threatened all parts of the economic organization of society. Hence the universal immobilization of status, decreed by Constantine and his successors, which affected the artisan in the city as much as the colonus in the country.[2]

A few years later a splendid skeleton outline of a theory was presented by Garsonnet,[3] but unfortunately he did not work it out in detail. In contrast to Kuhn's belief that a single fact was adequate to explain the serf-colonate, Garsonnet held that three factors were necessary to understand it in regard to its origin and development. In the first place, it had always been the policy of the Empire to provide for a regular and continuous cultivation of the land. In the second century the perpetual lease had been favored and in the late Empire great encouragements were given to the use of the emphyteutic lease, which was a contract providing for the lease of land in perpetuity for a low rent with

[1] "*Die städtische und bürgerliche Verfassung des römischen Reichs*" (Leipzig, 1864), vol. i, pp. 257-270.

[2] *Ibid.*, p. 259.

[3] *Histoire des locations perpétuelles* (Paris, 1879), pp. 161-162, *et passim.*

the obligation that the land be kept in constant cultivation.[1] In the second place, the fact that serfdom had already once existed in many of the countries which Rome had conquered made the transition to the late Roman colonate an easy one in these provinces; while in other provinces the transplantation of barbarians in a semi-servile condition served as an entering wedge for the colonate. Finally, and most important, was the legislation of the late Empire, which formed the colonate as an administrative institution in the interests of agriculture, the treasury, and the army "destined to assure cultivators to the land, taxpayers to the treasury, and soldiers to the army."[2] By preventing the desertion of the fields this legislation checked the decline of agriculture which was making the land tax unproductive, and by attaching the colonus to an estate it made it easy for each proprietor to furnish the government with his necessary contingent of recruits.

The writers of the administrative pressure school from Hegel and Wallon to Garsonnet had assigned several reasons for the colonate legislation. Wallon believed that Christianity had had a humanizing influence upon the Christian emperors and had induced them to form the colonate as a means of protection for the oppressed poor. Revillout, Rodbertus, and Heisterbergk regarded the colonate as primarily the result of the reorganization of the tax system by Diocletian and his successors, while Hegel and Wallon mention this as one of the essential factors bringing about the colonate legislation. Hegel, Serrigny, and Kuhn looked upon the colonate as a means of checking the inner decay and progressive disintegration which had become pronounced

[1] *Ibid.*, pp. 76, 161.

[2] *Ibid.*, p. 161. "... une institution administrative ... destinée à assurer des cultivateurs à la terre, des contribuables au fisc et des soldats à l'armée."

in all parts of society during the third century; and finally Garsonnet held that the colonate was the means established for the three-fold purpose of maintaining the cultivation of the land, the payment of taxes, and the conscription of recruits.

Of these various explanations of the colonate legislation, the first, that it was due to the influence of Christianity, can hardly be considered seriously. The colonate was not an institution primarily formed in the interests of the welfare of the peasantry, as the numerous laws which had to be passed to prevent the flight of the coloni attest; while the only one of the late emperors who might be suspected of humanitarian principles was Julian the Apostate! The hypothesis of Revillout and his followers, however, that the colonate legislation was due to the necessities of tax collection, stands on a somewhat firmer foundation. Taxes under Diocletian and his successors were unquestionably higher and more rigorously collected than in the third century. The oppressive taxes caused an increase in the desertion of the land on the part of tenants, as Lactantius observed,[1] and this desertion very probably seriously inconvenienced the *decuriones* who were responsible to the state for the collection of the taxes. The adscription of the colonus to the soil undoubtedly made it far easier for the tax administration to collect the poll tax and the *annona*, the tax in kind, just as it increased the facility with which recruits were obtained for the legions. But it is most improbable that the necessities of the tax administration alone were capable of accounting for the colonate legislation. Various forms of serfdom had existed in the ancient world in earlier times, but they had been imposed on an alien and conquered race

[1] Lactant., *De Mort. Persecut.*, vii. "Ut enormitate indictionum consumptis viribus colonorum, desererentur agri et culturae verterentur in sylvam."

as a result of conquest. The Roman colonate legislation, however, made serfs out of free Roman citizens, in many cases the direct descendants of the Italian race which had conquered the world. It was a measure altogether out of harmony with the spirit of the Roman law, as it had been constructed through centuries of orderly development, and can only be adequately explained by being attributed to a cause which was sufficient to demand such a drastic remedy. Land was being deserted for centuries before the time of Diocletian; the higher taxes of the tetrarchy merely accelerated the tendency. At the close of the fourth century Arcadius and Honorius abolished the poll tax (*capitatio humana*) for the province of Thrace, but the coloni remained as before "*servi tamen terrae cui nati sunt.*" [1] In 371 A. D., Valentinian in decreeing that the Illyrian peasants should not leave the estates which they were cultivating said that "they should serve the land not in the bonds of the tribute but in the name and title of coloni." [2] Finally with the fall of the western Empire the Roman tax system ceased to exist altogether, yet the colonate continued to survive but little changed up to the time of Charlemagne.[3] The fact that the increase of taxes in the late Empire resulted in an immediate acceleration in the tendency to desert the fields points far more eloquently to the decadent condition of agriculture than to the height of the taxes. Where the soil is fertile the peasant of every age in history has been noted for the tenacity with which he has clung to his holding despite the most oppressive of taxes. But where the land has lost its fertility, any of a number of causes may induce him to leave in hope of making an easier living elsewhere.[4]

[1] *Cod. Just.*, xi, 52, 1.

[2] *Cod. Just.*, xi, 53, 1. "Inserviant terris non tributario nexu sed nomine et titulo colonorum."

[3] Fustel de Coulanges, *Recherches sur quelques problèmes d'histoire*, pp. 145 *et seq.*

[4] *Cf.* Simkhovitch, *op. cit.*, p. 231.

The thesis of Hegel, Serrigny, and Kuhn that the colonate, like the similar adscription of the industrial classes and administrative officials, was an attempt to check the general disintegration which was everywhere menacing Roman society, was far more satisfactory than the tax theory of Revillout and his followers. By conceiving that an intimate relation existed between the colonate legislation and the forces which were bringing about the decay and destruction of ancient civilization, this theory presented a cause which was fully adequate to account for even such an extreme measure as the transformation of the free Roman citizen into a serf. The only hope of a decaying world seemed to lie in a universal stratification of all classes of society. A choice had to be made between the continued life of the Empire and the ancient liberty of its citizens; and in such a choice liberty had to give way. But while Revillout, Rodbertus, and Heisterbergk had developed their theories in the fullest detail, the explanation of the colonate legislation presented by Hegel, Serrigny, and Kuhn is little more than a bare statement. They do not discuss the causes which led to the decay of agriculture nor the way in which the colonate was bound up with them. Garsonnet offered a valuable suggestion in calling attention to the consistent policy of the Empire in maintaining the constant cultivation of the land by beneficiary legislation such as that favoring perpetual leases and emphyteusis.[1] But like the others, Garsonnet was primarily interested in other problems and did not carry his explanation of the origin of the colonate beyond the stage of a brief outline.

The writers of the administrative pressure school were on the right path and were not far from offering a theory of the origin of the colonate which would not only account for the source of the coloni but would present an adequate

[1] *Cf. supra*, pp. 132-133.

explanation of the *adscriptio glebae* as well. But in 1879 the first of a series of extremely valuable epigraphical discoveries was made in Africa. Later, inscriptions and papyri of almost equal value were unearthed in Asia Minor and Egypt. The attention of scholars of the next two generations who took up the problem of the colonate was naturally diverted from the explanation of the colonate legislation to the analysis of the significance of these documents in relation to the historical development of the colonate in Africa, Asia Minor, and Egypt. The explanation of the adscription of the coloni to the soil—the crucial question in the problem of the colonate—has been left, if not untouched, at least but slightly developed from the time of Heisterbergk and Garsonnet.[1]

[1] Three other writers during this period offered explanations of the origin of the colonate. Terrat, in his *Du colonat en droit romain* (Versailles, 1872), criticized the theories of previous servile tenures, barbarian settlements, and limited manumission of slaves, and decided in favor of the theory of administrative pressure as developed by Revillout. (Terrat, *op. cit.*, pp. 2-14, 84-103.) Marquardt, on the other hand, went back to the theory of barbarian settlements, and his discussion of the origin of the colonate is little more than a condensation of the theory of Huschke, as he himself admitted. (*Römische Staatsverwaltung*, Leipzig, 1876, ii, pp. 232-236.) His statement that "ueber den Ursprung dieses Verhältnisses (der Colonat) ... ist man nach mehrfachen Irrthümern zu folgender, jetzt anerkannter und als sicher zu betrachtender Ansicht gelangt" (*i. e.* the theory of Huschke, *op. cit.*, p. 233), like John Stuart Mill's similar assertion in regard to the theory of value, has frequently been quoted with great glee by later writers. The theory of barbarian settlements was likewise advocated by Arnold in his *Roman System of Provincial Administration* (London, 1879, pp. 160-64).

CHAPTER V

The African Inscriptions and the Colonate:

I. 1879-1890

In 1879 a long inscription and two fragments were discovered in Northern Africa not far from ancient Carthage. They all date from the time of Commodus in the latter part of the second century, a period in which our sources of the agricultural history of the Roman Empire are particularly scanty. Much had been learned about agricultural conditions of the first century from the works of Columella, Frontinus, and the elder and younger Pliny, while the Digest referred almost altogether to the third century. Consequently the importance of these discoveries was immediately recognized and studies were made of the inscriptions in 1880 by Mommsen[1] and Esmein,[2] and in 1881 by Cagnat and Fernique,[3] and Mowat.[4] The inscription,[5] which was called the inscription of Souk-el-Khmis from the place of its discovery, was engraved on a large tablet in four columns, the first of which has almost completely been destroyed while the second is badly worn away. But enough remains to present an illuminating picture of the economic conditions

[1] "Decret des Commodus," *Hermes*, xv (1880), pp. 385-411; 478-480.

[2] "Les colons du saltus Burunitanus," *Journal des savants*, 1880, pp. 686-705.

[3] "La table de Souk-el-Khmis," *Revue archéologique*, xli (1881), pp. 94-103; 139-151.

[4] "Determination du consulat qui date la table de Henchir-Dakhla (Souk-el-Khmis)," *Revue archéologique*, xli (1881), pp. 285-291.

[5] *C. I. L.*, viii, 10570.

on the *saltus Burunitanus*, one of the emperor's estates in Africa.

Mommsen and Mowat have placed the date of the inscription between 180 and 183 A. D.[1] Three types of people were mentioned in the inscription, *procuratores, conductores,* and *coloni* or *rustici.* The *procuratores* were imperial functionaries who had charge of the administration of the emperor's estates, one of whom resided on the *saltus Burunitanus* while others of superior grade were in Carthage, the capital of the province. The lessee of the imperial domain was designated by the normal legal word for lessee, *conductor.* In Italy, where the tenant farmers were ordinarily the lessees of quite small tracts, the words *conductor* and *colonus* were practically synonymous; but in Africa, in the inscription of Souk-el-Khmis as well as in the inscriptions discovered subsequently, *conductor* always referred to a capitalist who leased the whole of a large estate. Frequently and probably habitually the *conductor* sublet a part of his estate to sub-tenants, and these sub-tenants who cultivated the land themselves were known as *coloni* or *rustici.*

The second column of the inscription begins in the midst of a petition which the coloni were addressing to the emperor praying that he would redress their grievances. The coloni of the *saltus Burunitanus* were obliged to pay to the *conductor* rent in shares[2] and certain special services.[3] The amount of *operae* was limited to six days a year, two days'

[1] Column iv, 1-3 mentions "(Imperator Ca)es(ar) M. Aurelius Commodus An(toni)us Aug(ustus) Sarmat(icus) Germanicus Maximus." Commodus became emperor in 180 A. D. and in the same year changed his first name from Lucius to Marcus. In 183 he assumed the title "Pius" and in 184 "Britannicus," neither of which is contained in the inscription. *Cf.* Mommsen, *op. cit.,* p. 391; Mowat, *op. cit.,* pp. 285-289.

[2] *C. I. L.,* viii, 10570, iii, 8, ". . . partes agrariae."

[3] *Ibid.,* iii, 8-9, ". . . operarum praebitio iugorumve."

plowing, two days' hoeing, and two days' harvesting[1] in accordance with a chapter of a hitherto unknown *lex Hadriana,* which the petitioners say they have quoted above,[2] evidently in the first column which has been obliterated. However, notwithstanding these specific regulations and the *lex Hadriana* itself, a "*perpetua forma*" engraved in bronze[3] almost all the *conductores* for many years had encroached on the rights of the coloni and forced them to perform more services than the law required, "contrary to justice and to the detriment of thy interest," as the coloni say in their petition to the emperor.[4]

In recent years conditions had grown considerably worse, for the present *conductor,* Allius Maximus, had been particularly oppressive. The coloni had appealed constantly to the *procurator,* their natural protector and the functionary whose duty it was to see that imperial regulations were enforced, but to no avail.

Not only has he paid no attention to our petitions, during the many years we have begged and supplicated him, supporting ourselves on thy divine warrant (*subscriptio*); but he has made himself finally even the accomplice of this same Allius Maximus, a *conductor* who is most influential, to the point of sending soldiers to the *saltus Burunitanus*; some of us he has ordered to be seized and tortured, others to be imprisoned, and some, even though they were Roman citizens, he has ordered to be beaten with rods and cudgels; and certainly our only fault lay in the fact that, since these burdens fell so heavily upon our

[1] *Ibid.,* iii, 11-13, ". . . non amplius annuas quam binas aratorias, binas sartorias, binas messorias operas debea(mu)s."

[2] *Ibid.,* ii, 4-5, ". . . kapite legis Hadrian(a)e, quod supra scriptum est."

[3] *Ibid.,* iii, 16.

[4] *Ibid.,* ii, 3-4, ". . . contra fas atq(ue) in pernic(ie)m rationum tuarum."

feeble strength (*mediocritas*), we had sent an indignant letter to thy majesty, imploring thy aid.[1]

Grant us thy assistance since we are only humble peasants who make our living by the toil of our hands, and are not at all a match for a *conductor* who is most popular by reason of his lavish gifts, and who besides is well known to the *procuratores*, for he has obtained the lease several times in succession. Have pity on us and deign to prescribe by sacred rescript that we be required to furnish no more than what we owe according to the *lex Hadriana* and the letters of the *procuratores*, that is six days a year, in order that we, thy native peasants and the foster children of thy *saltus* be no longer kept from the bounty of thy majesty by the *conductores* of the imperial domain.[2]

On this occasion the coloni did not commit the mistake which they had made before of sending their petition to the *procurator* at Carthage, where the only result was the visitation of military troops and severe punishment for the temerity of their request. But they submitted their petition to a Lurius Lucullus, evidently a man high in favor in Rome, who presented it to the emperor; and Commodus granted their request.

[1] *Ibid.*, ii, 5-20. "Non solum cognoscere per tot retro annos, instantibus ac supplicantib(us) vestramq(ue) divinam subscriptionem adlegantibus nobis supersederit, v(e)rum etiam hoc eiusdem Alli Maximi (c)onductoris artibus gratiosissini (ul)timo in(dul)serit, ut missis militib(us in eum)dem saltum Burunitanum ali(os nos)trum adprehendi et vexari, ali(os vinc)iri, nonnullos cives etiam Ro(manos). . . virgis et fustibus effligi iusse(rit, scilic)et eo solo merito nostro, qu(od, venientes) in tam gravi pro modulo me(diocritati)s nostrae tamq(ue) manifesta (iniuria im)ploratum maiestatem tu(am, acerba e)pistula usi fuissemus."

[2] *Ibid.*, iii, 18-31. "Subvenias et cu(m ho)mines (r)us(ti)c(i t)en(ue)s manum nostrar(um ope)ris victum tolerantes conductor(i) profusis la(r)gitionib(us) gratiosis(si)mo impares aput proc(uratores) tuos simu(s), quib(us pe)r vices succession(is) per condicionem conductionis notus est, miser(eari)s ac sacro rescripto (non) amplius praestare nos, quam ex lege Hadriana et ex litteras proc(uratorum) tuor(um) debemus, id est ter binas operas, praecipere digneris, ut beneficio maiestatis tuae rustici tui vernulae et alumni saltum tuorum n(on) ultr(a) a conductorib(us) agror(um) fiscalium... (prohibeamur)."

The Emperor Caesar Marcus Aurelius Commodus Antoninus Augustus Sarmaticus Germanicus Maximus to Lurius Lucullus and to whom it may concern: The *procuratores* shall see that in conformity with the regulations and my decision that no more than six days services be required and that nothing be demanded from you contrary to the perpetual regulation.[1]

The first of the two fragments, the inscription of Aïn Zaga[2] was written on a tablet considerably smaller than the tablet of Souk-el-Khmis and so far as it is decipherable it is identical with the first five lines of the fourth column of the longer inscription.[3] This tablet was found about nineteen miles from the spot where the inscription of Souk-el-Khmis had been placed, thus indicating either that the *saltus Burunitanus* was very large and copies of the decree of Commodus were located at various places in the domain, or that the emperor's rescript applied to a group of imperial domains where conditions similar to those on the *saltus Burunitanus* obtained.[4]

The other fragment, the inscription of Gazr-Mezuâr,[5] is considerably longer than the inscription of Aïn Zaga, but it is so badly mutilated that it offers only an occasional phrase which is intelligible. Like the other inscriptions, it belongs to the reign of Commodus, for it mentions the consuls of the year 181 A. D.[6] Like the inscription of Souk-el-Khmis,

[1] *Ibid.*, iv, 1-8. "(Imperator Ca)es(ar) M. Aurelius Commodus An-(toni)nus Aug(ustus) Sarmat(icus) Germanicus Maximus Lurio Lucullo et nomine aliorum. Proc(uratores) contemplatione discipulinae et instituti mei ne plus quam ter binas operas curabunt, ne quit ... contra perpetuam formam a vobis exigatur."

[2] *C. I. L.*, viii, 14451.

[3] *Cf. supra.*

[4] *Cf.* Fustel de Coulanges, *Recherches sur quelques problèmes d'histoire*, p. 36, note 3; Schulten, *Hermes*, xxix (1894), p. 206.

[5] *C. I. L.*, viii, 14428.

[6] *Ibid.*, A, 16, " (datum Romae Imp. Caes. M. Aurelio Commodo III et L. An) tistio Burro cos." *Cf.* Schulten, *Hermes*, xxix (1894), p. 204.

this fragment seems to concern the appeal to the emperor of the coloni of another imperial *saltus*[1] and the answer of Commodus. The coloni are apparently so oppressed by the increased exactions of the *conductor* that they threaten to leave and return to their homes where they can live in freedom[2] unless the emperor restores their rights.[3] The latter part of the inscription is unquestionably the reply of the emperor.[4] The services of the coloni were limited to four days' plowing, four days' hoeing, and four days' harvesting[5] which it will be noted, is just twice the amount demanded from the coloni of the *saltus Burunitanus*. Shops for the use of the public were also mentioned, which possibly were to be provided by the *conductor,* if we can accept a restoration by Schmidt.[6] In another line the phrase "straw in making bricks"[7] is intact and seems to imply that brick-making was one of the services required of the coloni.[8]

Mommsen, the first writer to discuss these inscriptions, believed that they offered no clue to the solution of the problem of the origin of the later serf-colonate,[9] but nevertheless he held that they were very valuable in correcting the assumptions of men like Rodbertus, "who know too little of

[1] *Ibid.,* A, 11. "(Ro)gamus, domine, per salutem tuam succurras nobis et. . . .

[2] *Ibid.,* A, 6, "(domum re)vertamur, ubi libere movari possimus."

[3] *Cf.* Seeck, *Zeitschrift für Social und Wirtschaftsgeschichte,* vi (1898), p. 330.

[4] See the form of the verb in A, 15, ". . . .et totidem praestare debetis."

[5] *Ibid.,* A, 12, ". . . nt aratorias IIII, sartorias IIII, messicias IIII, et cui. . . ."

[6] *C. I. L.* viii, 14428, A, 13-14, ". . . rum fructum, et tabernae, quae semper publicis usibus (*inservivit . . . . vos praestare iubeo*)."

[7] *Ibid.,* A, 8, ". . . paleam in lateribus ducendis et m. . . .

[8] *Cf.* Seeck, in Pauly-Wissowa's *Real Encyclopädie,* iv, p. 490.

[9] Mommsen, *Hermes,* xv (1880), p. 392. "Von dem Leibeigenencolonat der späteren Zeit ist in unserer Urkunde, wie dies nach Zeit und Ort nicht anders zu erwarten war, keine Spur zu finden."

actual Roman conditions and too much of economic theorems." [1] The colonate, as a system of small tenants, he said, had always existed in Italy from the time of King Romulus to the time of King Humbert. The great development of slavery in the last centuries of the Republic disturbed the system, but there is no evidence that slavery caused a quantitative diminution of the tenant class either in Italy or in the provinces. The inscription of Souk-el-Khmis furnished unmistakable evidence of the existence in large numbers of free tenant-coloni on an imperial domain in Africa.

How these tenant-coloni in Africa and Italy were transformed into serf-coloni is a problem concerning which Mommsen hesitated to express an opinion. "There are few problems of equal difficulty," he said, "for sources of general scope are altogether wanting, and the conclusions of induction are even more questionable in this sphere than elsewhere." [2] The ranks of the tenant-coloni were constantly being augmented by the emancipation of the agricultural slaves and this must have increased somewhat the dependence of the relationship of the tenants to their landlords. But, nevertheless, there was a wide gap between the condition of these client-tenants and the serf-coloni, bound forever to the soil. The latter condition was altogether un-Roman and may perhaps have been imported from without the Empire, as by the settlement of barbarian *dedititii* on Roman land.[3]

Esmein, whose *Colons du Saltus Burunitanus* was pub-

[1] *Ibid.*, p. 408, "die von den realen römischen Verhältnissen zu wenig und von nationalökonomischen Theoremen zu viel wissen."

[2] *Ibid.*, p. 410. "Es giebt ... wenig Probleme von gleicher Schwierigkeit; denn allgemeine Zeugnisse fehlen ganz und Inductionsschlüsse sind gerade auf diesem Gebiet mehr als anderswo bedenklich."

[3] *Ibid.*, pp. 410-411.

lished soon after Mommsen's essay,[1] differed considerably from Mommsen in the significance which he attached to the inscription of Souk-el-Khmis in its bearing upon the historical development of the serf-colonate. He agreed with Mommsen that slavery, although it reached very great proportions in Italy, never wholly succeeded in displacing the free peasant.[2] The small proprietors in many instances lost their holdings, but frequently they and their children became tenant-coloni of the owners of the great *latifundia*. By the time of Columella an hereditary tenant class was developing. Columella said that "that estate was most fortunate which had coloni who were native to the place and which always retained them by long familiarity even from their cradles, as though they had been born upon their own hereditary possession." [3] But the coloni here mentioned by Columella were undoubtedly free, for they were being retained on the estate by persuasion rather than by force.[4]

However, Esmein argued, in certain parts of the Empire there were coloni of a considerably more humble status than those mentioned by Columella. He agreed with Heisterbergk that the home of the serf-colonate was to be found in the provinces, although he believed that factors more important than the taxability of provincial land were the cause of its origin. The serf-colonate, he stated, first developed on the great provincial estates, called *saltus*, such as *saltus Burunitanus* of the inscription of Souk-el-Khmis. These *saltus* were enormous in size, frequently being as large or

[1] *Journal des savants*, 1880, pp. 686-705. Also published in his *Mélanges d' histoire du droit romain* (Paris, 1886), pp. 293-321.

[2] *Mélanges*, p. 308.

[3] Colum., *De R. R.*, i, 7. "Felicissimum fundum esse, qui colonos indigenas haberet, et tanquam in paterna possessione natos, jam inde a cunabulis longa familiaritate retineret."

[4] Esmein, *op. cit.*, p. 308.

larger than the whole territories of municipalities.[1] Each *saltus* was attached to the nearest city for the collection of its taxes, but in all other respects it was free from the authority of the city magistrates. The result of this condition was to make the will of the proprietors supreme on their domains.[2] The tribunals of the neighboring cities were not open to the cultivators of the *saltus* and in case they were treated unfairly their only recourse was to appeal to the governor of the province. But such appeals were of course exceedingly infrequent, for the peasants were only humble natives without influence, and Roman governors were not apt to pay much attention to their complaints. Likewise, it must be remembered that in many Roman provinces the peasantry was already in a dependent condition when they were incorporated into the Roman Empire. In Egypt the state peasants, (δημόσιοι γεωργοι) seemed to be in an extremely low position like the modern Egyptian fellah; while it is not at all unlikely that the Carthaginians cultivated their estates by means of the indigenous peasantry attached to the soil as serfs.[3]

If the inhabitants of the great private *saltus* were in a semi-servile condition it is probable, said Esmein, that the coloni of the imperial domains were still more dependent. The imperial *procuratores* represented the emperor on the estates and held the coloni very strictly under their control. One of the decisions in the Digest stated that "if the *procuratores* prohibit anyone from entering the imperial domains who might cause trouble or injury to the imperial coloni, that person must stay away; for so the Emperor Pius

[1] Frontinus, *De controv. agror*, p. 53. ed. Lachmann. "In Africa, ubi saltus non minores habent privati, quam res publicae territoria; quin immo multis saltus longe majores sunt territoriis."

[2] Esmein, *op. cit.*, pp. 309-310.

[3] Esmein, *op. cit.*, pp. 300, 309-312.

decreed in a rescript to Julius."[1] If the *procurator* had the power to prohibit the entrance of undesirable persons on the imperial domains, it is very probable, Esmein maintained, that he also had the power to prevent the coloni from leaving. Other decisions in the Digest show that the imperial coloni were freed from municipal burdens and *corvées* as these interfered with their work on the fiscal domains;[2] however, some municipal services might be performed if, in the opinion of the *procurator,* it could be done without materially affecting the returns of the estate to the imperial treasury.[3]

The inscription of Souk-el-Khmis was particularly valuable, Esmein held, in illustrating how the law as stated in the Digest actually was applied in practice. The inscription showed that the *procuratores* were able to enforce their authority over the discontented coloni even to the extent of sending troops from Carthage and punishing the malcontents.[4] Esmein disagreed entirely with Mommsen in the latter's belief that the coloni of the *saltus Burunitanus* were simple free farmers. The expression "thy peasants, home-born slaves, and foster children"[5] which the coloni used in their appeal to the emperor was certainly not the way free farmers would speak of themselves. Likewise the contrast between the *conductor* and the coloni does not agree with Mommsen's opinion. "We are only humble peas-

[1] *Dig.,* i, 19, 3, 1. "Si tamen, quasi tumultuosum vel injuriosum adversus colonos Caesaris prohibuerint (procuratores) in praedia Caesariana accedere, abstinere debebit; idque divus Pius Julio rescripsit."

[2] *Dig.,* L, 6, 5, 11. "Coloni quoque Caesaris a muneribus municipalibus liberantur, ut idoniores praediis fiscalibus habeantur."

[3] *Dig.,* L, 1, 38, 1. "Item (Impp. Antoninus et Verus) rescripserunt, colonos praediorum fisci, muneribus fungi sine damno fisci oportere. Idque excutere praesidem adhibito procuratore debere."

[4] *C. I. L.,* viii, 10570, ii, 11-16.

[5] *Ibid.,* iii, 28-29, ". . . rustici tui vernulae et alumni."

ants," the coloni say, "who make our living by the toil of our hands, and are not at all a match for a conductor who is most popular by reason of his lavish gifts." [1] The *conductor* held a temporary lease [2] while apparently the coloni were hereditary tenants. They owed *corvées* [3] and evidently, before the *lex Hadriana* had been issued, the *procuratores* had been able to augment their rents and services, which precludes the idea that the coloni held a lease. But the most noteworthy characteristic of the coloni was the perpetual nature of their tenure. Their rents and services were regulated by a chapter of the *lex Hadriana,* drawn up over a half-century before, which they designated as a *perpetua forma.* Although they had been subject to a long and continued oppression on the part of the *conductores* they had not left the estate nor did they threaten to do so in their petition to the emperor. Their only resource seemed to be to call on the good offices of Commodus himself to restore the terms of the *lex Hadriana.*[4]

Esmein held that all these particulars indicated strongly that the coloni of the inscription were already in the condition of the serf-coloni of the late Empire. The fact that the law, to which the coloni referred as that governing their obligations, was known as the *lex Hadriana,* led Esmein to believe that this was the *lex a majoribus constituta* mentioned in a constitution of Valentinian [5] as the law which

[1] *Ibid.,* iii, 18-22. "Homines rustici tenues manum nostrar(um ope)ris victum tolerantes conductor(i) profusis largitionib(us) gratiosis(si)mo impares . . . . simus."

[2] *Ibid.,* iii, 22-23, ". . . (pe)r vices succession(is) per condicionem conductionis notus est."

[3] *Ibid.,* iii, 8-9, ". . . operarum praebitionem iugorumve;" iii, 11-13. ". . . binas aratorias, binas sartorias, binas messorias operas debeamus."

[4] Esmein, *op. cit.,* pp. 314-317.

[5] *Cod. Just.,* xi, 51, 1.

had originally established the serf-colonate.[1] Huschke had already attempted to identify the law mentioned in this constitution with the census law of Augustus;[2] but his conjecture was supported by no evidence direct or indirect. Giraud, a year earlier had suggested as the *lex a majoribus constituta* the *Edictum perpetuum,* a collection of the edicts of praetors, aediles, and provincial governors drawn up by Salvius Julianus under Hadrian in 131 A. D.[3] Giraud had regarded his suggestion merely in the light of a conjecture as there was no evidence to support it. But Esmein believed that the inscription of Souk-el-Khmis furnished the desired evidence. The *lex Hadriana* of the inscription, like Hadrian's *Edictum perpetuum,* was a long and systematically drawn up edict, for it was divided into chapters.[4] Esmein concluded, therefore, that the *lex Hadriana* was a part of Hadrian's great codification of praetor's edicts, and likewise the initial law which established the serf-colonate.[5]

Mommsen, whose word was law in the realm of Roman history in 1880, had been too cautious in stating that no relation whatever was to be found between the condition of the coloni of the *saltus Burunitanus* and the later serf-coloni. But Esmein went too far. The coloni of the inscription had many characteristics in common with the serf-coloni, yet the distinctive feature of the serf-colonate, the adscription to the soil, was lacking. The coloni may have been kept on the estate by custom, personal attachment, or the lack of an opportunity to establish themselves elsewhere, but there is no reference in the inscription to any legal ob-

[1] *Esmein, op. cit.,* p. 318.

[2] Huschke, *Ueber den Census,* p. 169. *Cf. supra,* p. 61.

[3] Giraud, *Essai sur l'histoire du droit français,* p. 166.

[4] *C. I. L.,* viii, 10570, iii, 4-5, ". . . kapite legis Hadrianae."

[5] Esmein, *op. cit.,* pp. 319-320.

ligation to remain on their holdings. In the contemporaneous fragmentary inscription of Gazr-Mezuâr the coloni threatened to return to their homes where they could dwell in freedom unless their request was granted,[1] while, in African inscriptions discovered subsequently, mention was made of the desertion of land by coloni without any attempt on the part of the management of the estate to retain them by force.[2] The thesis of Esmein, then, that the *lex Hadriana* was the *lex a majoribus constituta* which established the colonate cannot be accepted.[3] But the greater part of Esmein's interpretation of the position of the coloni on the *saltus Burunitanus* has been adopted by his successors; and his theory that the colonate first developed on the great *saltus*, especially those belonging to the emperor, was received with considerable favor.

In 1884 *Le colonat romain* of Fustel de Coulanges[4] was published which still remains today the most readable and comprehensive treatise on the colonate. Like Esmein, Fustel de Coulanges laid great stress on the inscription of Souk-el-Khmis in the development of his theory; and by means of the new information now available in regard to the condition of the peasantry he felt that he could successfully challenge the theory that the colonate was an express creation of the administration of the late Empire, a theory which

[1] *C. I. L.*, viii, 14428, A, 6. "... (domun re)vertamur, ubi libere morari possimu(s)."

[2] *Cf. infra*, pp. 174, 181.

[3] Esmein's identification of the *lex Hadriana* with the *Edictum perpetuum* likewise proved unacceptable. "*L'Edictum perpetuum* n'est jamais appele *lex Hadriana*, ni même *lex*," said Fustel de Coulanges. "Ensuite *l'Edictum perpetuum*, sur lequel nous avons tant de renseignements au Digeste, ne paraît avoir rien contenu sur le colonat; s'il avait touché cette matière, nous en aurions quelques trace au Digeste." *Recherches*, p. 39, note 1.

[4] *Recherches sur quelques problèmes d'histoire*, pp. 1-186.

had been almost universally accepted since the time of Revillout, thirty years before. It is true, he said, that the serf-colonate as a legal institution appeared suddenly in a constitution of Constantine in 332 A. D.[1] But this constitution did not create the colonate but merely recognized its existence. No mention of a law which created the colonate has ever been found, nor do later texts ever attribute the establishment of the colonate to any emperor or legislator. Instead, the documents of the fourth century refer to the colonate as a "very ancient" institution[2] "established by our ancestors."[3] Therefore, in order to trace the origin of the colonate, Fustel de Coulanges believed it was necessary to go to sources considerably earlier than the fourth century.[4]

Coloni were frequently mentioned by the second and third century jurists of the Digest, but they were far different from the serf-coloni of the codes. Both *colonus* and the more technical term *conductor* (lessee) were used to indicate a tenant who held a short-term lease and paid a money rent. The coloni were under no obligation to remain on their tenancies after the expiration of their leases,[5] nor could they be retained by force.[6] However, in addition to these tenant-coloni holding a lease and paying a money rent, Fustel de Coulanges believed that at the time of the writers of the Digest another class of coloni was developing on the

[1] *Cod. Theod.*, v, 17, 1.

[2] *Cod. Just.*, xi, 63, 3, (383 A. D.) ". . . antiquissimos colonos."

[3] *Cod. Just.*, xi, 51, 1. "Cum lex a majoribus constituta colonos quodam aeternitatis jure detineat."

[4] Fustel de Coulanges, *op. cit.*, pp. 4-7.

[5] *Dig.*, xix, 2, 25, 2. "Quin liceat colono vel inquilino relinquere conductionem, nulla dubitatio est."

[6] *Cod. Just.*, iv, 65, 11 (244 A. D.). "Invitos conductores seu heredes eorum post tempora locationis impleta non esse retinendos saepe rescriptum est."

great estates which was not in such a free condition. These coloni were the *coloni partiarii,* tenants who paid rent in shares. They were almost ignored by jurists because they did not hold a contract. But notwithstanding the fact that they were only mentioned once in the Digest, Fustel de Coulanges maintained that they were a very numerous class.[1]

How did the *coloni partiarii* originate? The only example we have of a transformation of tenants paying money rent to tenants paying rent in shares is contained in one of the letters of the younger Pliny.[2] Pliny was complaining in this letter that he had considerable difficulty in obtaining rent from his tenants. He had remitted the rent several times but the only result was to heap up the arrears of his tenants to a total sum which he knew they would never be able to pay. Even more serious was the fact that the coloni, despairing of paying their debts, consumed or spoiled the whole product of the estate. In order to get something out of his estates, therefore, Pliny changed his system of tenure from money rent to share rent and his coloni ceased to be *conductores* and became *coloni partiarii.* The condition of the tenantry described in this letter of Pliny was by no means an uncommon one, Fustel de Coulanges maintained. Pliny also spoke of the coloni in arrears on an estate of one of his neighbors,[3] while the Digest contains many references to estates bequeathed *cum reliquis colonorum.*[4] Columella referred to debtors cultivating the *latifundia* along with slaves[5] while Caesar mentioned debtor tenants in Gaul,[6] and Varro in Illyria, Asia, and Egypt, as

[1] Fustel de Coulanges, *op. cit.,* pp. 13-14.

[2] Plin., *Epist.,* ix, 37.

[3] *Epist.,* iii, 19.

[4] *Dig.,* xxxiii, 7, *passim.*

[5] *De R. R.* i, 3, 12, "occupatos nexu civium."

[6] *De Bel. Gal.,* i, 4.

well as in Italy.[1] Probably on all these estates where debtor tenants were to be found the same change was made from money rent to rent in shares which had taken place on the estate of Pliny.[2]

Two important consequences followed from this condition. The tenant in debt was legally permitted to leave the domain but only on condition that he could obtain some one to furnish bail [3] for his arrears. Of course in actual practice the debtor tenant had slight chance of finding a rich man who would offer security for him, so the real effect of this law was to bind the debtor to the estate until his debt was paid. In the second place, when the landlord had changed the tenure of his estate from a fixed money rent to a share rent, he at the same time withdrew the protection of the law from his tenants; for an agreement made by his tenants to pay rent in shares was not a contract recognized by the law. The result was that the landlord could impose any condition he pleased on his *coloni partiarii*. Pliny required his share tenants to work under the supervision of his slave stewards,[4] while Catiline [5] and Domitius Ahenobarbus [6] used their coloni along with their freedmen and slaves as personal retainers in their campaigns. The coloni could not leave the estate on account of their debts, so they had no alternative but to submit to the will of their landlord. Thus the former free tenant had fallen through debt into a condition of dependence which he had little chance of changing; and custom crystallized his position into a subjection almost perpetual.[7]

[1] *R. R.*, i, 17.

[2] Fustel de Coulanges, *op. cit.*, pp. 15-20.

[3] *Dig.*, xxxiii, 7, 20, 3, ". . . interposita cautione."

[4] *Epist.*, ix, 37.

[5] Sallust., *Catil.*, 59.

[6] Caes. *Bel Civ.*, i, 34 and 56.

[7] Fustel de Coulanges, *op. cit.*, pp. 20-22.

In Italy a dependent colonate was gradually being established through debt and the substitution of the non-contractual share rent for the five-year lease with its money rent. In the provinces a similar dependent status was developing on the great *saltus,* particularly those belonging to the emperor. In an analysis of the texts bearing upon the *saltus,* most of which had already been discussed by Heisterbergk and Esmein, Fustel de Coulanges came to the same conclusion, namely, that the cultivators of the fields were not slaves nor peasants fully free but a tenantry in a condition of considerable dependence.[1] In addition to texts previously studied, Fustel de Coulanges called attention to a brief inscription which had been recently discovered in Africa in which the peasants, whom the inscription called *coloni,* "restored a monument which had become dilapidated from age in honor of the Emperor Marcus Aurelius and his children, and also built two arches at the order of the provincial *procurator,* a freedman of the emperor."[2] These coloni were not slaves, Fustel de Coulanges argued, for they erected the monument "at their own expense," nor should they be regarded as a free peasantry for they were working "under the orders of the *procurator.*"

But the document which illuminated all other sources and which gave the clearest picture of the condition of the peasantry on a great provincial *saltus* was the inscription of Souk-el-Khmis. The conclusions drawn by Fustel de Coulanges after a study of the inscription corresponded very closely to those already published by Esmein. The peasants on the estate were called *coloni* but they had nothing in

[1] *Ibid.,* pp. 25-32.

[2] *C. I. L.,* viii, 587. "Pro salute imp. Caes. M. Aureli Antonini Aug. liberorumq(ue) eius, coloni saltus Massipiani aedificia vestustate conlapsa s(ua) p(ecunia) r(efecerunt), item arcuus duos a s(olo) f(ecerunt) iubente Provinciale Aug(usti) lib(erto) pro(curatore)."

common with the tenant-coloni of the Digest except the name. The head-tenant or *conductor* held a short-term lease, but the coloni had no contract, for had they held one they would have mentioned the fact that it had been broken in their complaint to the emperor. Thus they resembled the *coloni partiarii* of Italy not only because they paid rent in shares but also because their condition was not ruled by the law of contracts. Instead, their rights and obligations were governed by an imperial regulation known as the *lex Hadriana,* which was described in the inscription as a *perpetua forma.* Evidently, then, they were regarded as perpetual tenants. No law compelled them to remain on the estate but they were kept there by the strong bonds of custom. No doubt their ancestors had entered the domain voluntarily, but after several generations they had come to look upon the land as an hereditary possession. "The more they lived there the more interest they had to continue to live there. The proprietor never thought of expelling them nor did they ever think of leaving. Thus the man gradually took root in the soil before the day when the law would attach him there. He became a voluntary colonus before becoming an obligatory one. Habit and interest began what the law was destined to complete." [1]

The main sources of the colonate were the tenants who were attached to the estates of their landlords by their debts, and those who, like the coloni of the *saltus Burunitanus,* were attached to the domain through habit and interest. During the second and third centuries the numbers of the coloni were considerably augmented by the transplantation

[1] Fustel de Coulanges, *op. cit.,* p. 42. "Plus ils y vécurent, plus ils eurent intérêt à continuer d'y vivre. Ni le propriétaire ne songea à les expulser, ni eux à quitter la terre. . . . Ainsi l'homme, peu à peu, prit racine au sol bien avant le jaur où la loi devait l'y attacher. Il se fit colon volontaire avant d'être colon obligé. L'habitude et l'intérêt commencèrent ce que la loi allait achever."

of northern barbarians within the Empire as coloni. In the third chapter of his treatise, Fustel de Coulanges discussed the texts on barbarian settlements already assembled by Zumpt and Huschke and came to much the same conclusion as the earlier writers in regard to the status of the *dedititii*. But while Zumpt and Huschke held that the barbarian colonate served as the model for the colonate of the Codes, Fustel de Coulanges maintained that the barbarians merely were settled in the condition in which the mass of the peasantry had already fallen. In this way he avoided the objections which had been urged against the theory of barbarian settlements by Schultz, Kuhn and Heisterbergk, that the barbarians were too few in number and not widely enough extended to form the basis of the colonate. But although Fustel de Coulanges argued more eloquently than either Zumpt or Huschke that the barbarian *dedititii* were settled as serf-coloni, the barbarian settlements played only a subsidiary rôle in his theory.

At the same time that a dependent tenant class was gradually being formed among the free peasantry, a similar development was taking place among the slaves. The old system of working an estate by slave gangs of ten (*decuriae*) was giving place everywhere in the second and third centuries to the later practice of assigning the slave a lot and giving him a share of the proceeds as a reward. The germ of the new system probably lay in granting the slave poor land as his *peculium* which had been done as early as the time of Varro. By the time of Alexander Severus, Ulpian could refer to a slave as a *quasi colonus*[1] and in the same reign we have the first mention of the *adscripticius*,[2] whom Fustel de Coulanges regarded as a slave with a servile tenure

[1] *Dig.*, xxxiii, 7, 12, 3.

[2] *Cod. Just.*, viii, 51, 1.

who had been inscribed in the census for his plot of land.[1] In 327 Constantine decreed that the *adscripticii* could not be sold out of the province[2] and forty years later Valentinian I declared that they were bound forever to the land and could not be sold from the estate by their masters.[3] However, like Serrigny and Rodbertus, Fustel de Coulanges was careful to distinguish between the slave *adscripticii* and the serf-coloni. Servile tenures had no direct connection with the formation of the colonate, for slave *adscripticii* were distinguished from coloni not only in the time of Justinian in the sixth century but in the documents of the eighth and ninth centuries. Yet the servile tenure is important in showing that the formation of the colonate was not an isolated fact but one which was accomplished with the development of another analogous institution, which must have had some indirect effect on it.[4]

The colonate existed in actual practice in the second and third centuries; but it was not recognized by law until the fourth. The legal recognition of the colonate came through the registration of the coloni in the tax rolls of the census. The census had fallen into disuse during the half-century of anarchy which followed the death of Alexander Severus, but it was revived and vigorously applied by Diocletian in connection with his tax reforms. The exact nature of Diocletian's changes in the tax administration has never been fully understood, because of the scanty and somewhat conflicting source material at our disposal; but Fustel de Coulanges presented the following interpretation. The *latifundium* was the typical estate of the late Empire, he said, but

[1] *Op. cit.*, pp. 62-63.

[2] *Cod. Theod.*, xi, 3, 2.

[3] *Cod. Just.*, xi, 48, 7.

[4] Fustel de Coulanges, *op. cit.*, pp. 54-69.

it was very difficult to evaluate for the purposes of taxation because it was so large that it was composed of land of very different quality. Some of the land was fertile and some sterile; some fields were devoted to arable crops and vineyards, while others were pastures, forests, or waste; and usually only a part of the land was utilized by the proprietor. If the land did not yield a product it was exempt from taxation according to the earlier tax laws [1] and during the late Empire there were many disputes between the government and the proprietors in regard to these exemptions.[2] It was almost impossible to determine the value of the different grades of land and to decide what land could claim exemption and what land was properly taxable. Hence the most practicable basis for the assessment of the land tax was the number of people employed in cultivation, Fustel de Coulanges believed.[3] The unit of taxation was the *caput*, or able-bodied cultivator. Whether he was a slave or a freeman made no difference so far as the assessment of the land tax was concerned. Women were rated at one-half [4] and children and old men were not counted at all.[5] The coloni were registered in the census, therefore, for the purpose of determining the number of taxable *capita* in the Empire.[6]

The registration of the coloni in the census was probably not applied universally at one time, for an edict establishing the practice has never been found nor was it ever mentioned in later documents. It is possible that it was applied in first one province and another until all throughout the Em-

[1] *Dig.*, L, 15, 4, 1.

[2] *Cod. Theod.*, xi, 28, 12. ". . . desertorum nomine querela;" *cf. Cod. Theod.*, xiii, 11, 4 and 15.

[3] *Op. cit.*, p. 79.

[4] *Cod. Just.*, xi, 48, 10.

[5] Lactantius, *De Mort. Persecut.*, 23.

[6] Fustel de Coulanges, *op. cit.*, pp. 75-81.

pire *censiti, censibus adscripti, adscripticii, censibus inserti,* and *tributarii* became common designations for coloni. In fact the registration in the census may have passed almost unnoticed at the time but indirectly it had an important consequence. The coloni were dependent tenants before the registration in the census, but their condition had never been recognized by law and they were not legally prevented from leaving their landlord's estate if they wished. But once they were registered on the tax rolls for a certain piece of land they could not leave it. *Adscriptus censibus* became equivalent to *praedio adscriptus.*[1] "The registration in the census did not create a single colonus because the man had already become a colonus before he was registered in the census as such; but it was the first certain title which had officially designated their condition; and it was also the first point of contact which the coloni had with the government."[2]

Although there were many constitutions dealing with the coloni in the Codes, a law establishing the colonate has never been found; and it is doubtful if such a law ever existed. But after the registration of the coloni in the census by Diocletian the problem soon arose as to the procedure which should be followed in case a colonus deserted a piece of land for which he had been registered. Such a desertion would cause confusion in the tax rolls, so it was declared illegal and the proprietor who had received the deserter as his tenant was compelled to pay his back capitation tax.[3]

[1] *Cod. Theod.*, xi, 1, 26.

[2] Fustel de Coulanges, *op. cit.*, pp. 85-86. "L'inscription au cens ne créa pas un seul colon par la raison que l'homme était déjà colon avant d'être comme tel inscrit au cens; . . . mais elle a été le premier titre certain qui ait marqué officiellement leur condition; et elle a été aussi le premier point de contact que les colons aient eu avec le gouvernement impérial."

[3] *Cod. Theod.*, v, 17, 1. "Apud quemcumque colonus iuris alieni fuerit inventus, is non solum eundem origini suae restituat, verum super eodem capitationem temporis agnoscat."

Thus the colonate legislation of the late Empire was not drawn up in order to create a serf class but merely to regulate the administration of the capitation tax. The colonate had existed as an economic institution for three centuries; the legislation in the Codes merely gave it formal legal recognition.[1]

The theory of Fustel de Coulanges was received with the greatest favor in France. It was followed very closely in 1888 by both Willems [2] and Rérolle [3] in their explanations of the origin of the colonate; and in 1892, in a new work,[4] Esmein modified the theory which he had advanced in 1880 to bring it in closer harmony with that of Fustel de Coulanges.[5] In a more extended work, Glasson [6] after reviewing previous theories of the colonate found that his views were in closest accord with the theory of Fustel de Coulanges. The main source of the coloni, he maintained, was the peasantry on the great domains like the *saltus Burunitanus*. From the time of the first formation of the *latifundia* in Italy he believed that a large class of humble dependents was to be found as tillers of the soil on these great estates. They did not hold contracts, but were governed by general regulations similar to the *lex Hadriana* of the *saltus Burunitanus*. With the establishment of the Empire probably the

[1] Fustel de Coulanges, *op. cit.*, pp. 87-91, 97, 185.

[2] *Droit public romain* (Paris, 1888), pp. 616-619.

[3] *Le colonage partiaire* (Lyons, 1888), pp. 54-59, 76-83.

[4] *Histoire du droit français* (Paris, 1892), pp. 22-25.

[5] It is interesting to note that the most recent work in France on the colonate is based altogether on the theory of Fustel de Coulanges. *Cf.* Leclercq in the *Dictionnaire d'archéologie chrétienne et de liturgie* (Paris, 1914), art. "Colonat," vol. iii, pp. 2235-2266. It was also followed by Cunningham in his *Western Civilization* (Cambridge, 1898), vol. i, pp. 190-191.

[6] *Histoire du droit et des institutions de la France* (Paris, 1887), vol. i, pp. 458-495.

number of tenants with leases increased in the vicinity of Rome, but these were only the tenants in better circumstances. The large pauper class of the Empire could only obtain tenancies on the land by accepting the more rigorous terms offered by the proprietors of the great *saltus*, where they cultivated the soil without individual contracts, just as the coloni of the *saltus Burunitanus*. At the same time the slaves on the *latifundia* were granted servile tenures and barbarians were settled on Roman domains in the same condition as the native coloni. Finally, as Fustel de Coulanges had pointed out, the registration of the coloni in the census brought about not the creation but merely the legal recognition of the colonate.[1]

Glasson, although he agreed with Fustel de Coulanges in most of the details of his theory, took issue with him strongly in regard to the first source of the coloni which the latter had mentioned, namely the share tenants whom Fustel de Coulanges claimed had lost their leases and were bound to the soil by their debts; and the objections of Glasson have in general been sustained by subsequent writers.[2] The share colonate was not an extra-legal institution as Fustel de Coulanges maintained, but it was specifically recognized by Gaius in a decision in the Digest.[3] The *partiarius colonus* was as much a regularly constituted lessee as the *colonus qui ad pecuniam numeratam conduxit*. Payments in kind were likewise recognized by jurists as coming under contractual

[1] *Ibid.*, pp. 493-495.

[2] *Cf.* Dareste, *Journal des savants* (1886), p. 517; Humbert, *La grande encyc.*, art. "Colonat," xi, p. 1055; Toutain, *Nouv. rev. hist. du droit fr.* (1897), pp. 414-415; Beaudouin, *ibid.*, p. 692; Cuq, *Mém. à l'acad. des inscrip.*, xi, 1, pp. 117-121; Vinogradoff, *Growth of the Manor*, p. 109; Heitland, *Agricola*, p. 365.

[3] *Dig.*, xix, 2, 25, 6. "Apparet autem de eo nos colono dicere qui ad pecuniam numeratam conduxit; alioquin *partiarius colonus*, quasi societatis jure, et damnum et lucrum cum domino fundi partitur."

relations.[1] In the second place, the hypothesis of Fustel de Coulanges that the indebted tenant could not leave his holding unless he found some one to offer security for his debts[2] was based on a misconception of the meaning of *cautio*. *Cautio* as used by the Roman jurists meant not security in the sense of bail but a written acknowledgement of the debt.[3] Hence the argument which Fustel de Coulanges had advanced that indebted tenants were bound to remain on their tenures because of their inability to find security for their debts, cannot be sustained. The tenant in debt undoubtedly held a humble position on the estate of his landlord, but he was not a serf.

As we have shown before, there is not the slightest evidence that either the tenants on the great *saltus*[4] or the barbarian *dedititii*[5] were attached to the soil before the legislation of the Codes. They were no doubt in a position of considerable dependence as the inscription of Souk-el-Khmis had demonstrated, but there was a much greater difference between such a state and the hard-and-fast lines of the serf-colonate than Fustel de Coulanges and Glasson seemed to realize. No condition can be very oppressive which one is free to leave at pleasure. But when a man was attached forever to a certain piece of land in bonds which affected not only himself but his children and descendants as well he was removed by an important step from the tenantry of the second and third centuries, poor and humble though they doubtless were. It was a trans-

[1] *Inst.*, iii, 24, 2; *Dig.*, xix, 5, 5, 2.

[2] *Dig.*, xxxiii, 7, 20, 3. "Quaesitum est an reliqua colonorum, qui finita conductione, *interposita cautione*, de colonia discesserant."

[3] Glasson, *op. cit.*, i, 491. *Cf.*, especially Cuq, *op. cit.*, p. 121 for references.

[4] *Cf. supra*, pp. 149-150.

[5] *Cf. supra*, pp. 74-91.

formation entirely too radical and out of harmony with the whole development of the Roman law to be accounted for merely by Diocletian's reforms in tax administration and the census. The entire Roman world was waning in vigor, and decay had set in everywhere. When industry, agriculture, the army, and the administrative bureaux seemed unable to maintain themselves against the universal disintegration, force was applied and every employment was made fixed and hereditary. The colonate legislation was fundamentally concerned with maintaining the cultivation of the fields at any cost and punishing with increasing penalties the colonus who fled or the patron who received and sheltered him. The assumption of Fustel de Coulanges and Glasson that the attachment of the colonus to the soil was merely incidental to the registration of the coloni in the census for purpose of taxation is a total misplacement of emphasis. The coloni were being registered in the census during the reign of Alexander Severus (222-235 A. D.) [1] at a time when numerous texts in the Digest show that they were unquestionably free tenants. They continued to be attached to the soil long after the Roman tax system had disappeared. The government was indeed concerned with them incidently to see that they were properly inscribed in the tax rolls of their estates; but it was fundamentally concerned in maintaining their perpetual and hereditary adscription to the soil.

The first effect of the inscription of Souk-el-Khmis had been to turn the attention of writers on the colonate away from the legislation of the fourth century. By studying the historical development of the tenant classes they attempted to account for the origin of the colonate independently of the administrative pressure of the imperial

[1] Ulpian in *Dig.*, L, 15, 4, 8 (*De censibus*). "Si quis inquilinum vel colonum non fuerit professus, vinculis censualibus tenetur."

government. Esmein had felt that the quasi-permanent and semi-servile conditions on the *saltus Burunitanus* might be the survival of a previous Carthaginian serfdom. Fustel de Coulanges had believed the permanence of their tenure was the result of custom which the peasants never thought of breaking. But could it be related to the same administrative pressure which later completed the process by attaching the coloni forever to the soil? This was the thesis of Henry Francis Pelham, who in 1890 presented a new theory of the colonate, the first contribution to be made by an English writer.[1]

Heisterbergk had maintained that the original home of the colonate was in the provinces where the taxability of the land did not permit pleasure estates nor wasteful slave culture as in Italy. Esmein found the original home of the coloni in the great *saltus* where the power of the proprietor was so great that it made him independent of local government and kept his tenants wholly in his subjection. Pelham likewise believed that the colonate first appeared on the *latifundia,* but originally those which belonged to the emperor. The coloni as described in the Digest bore little similarity to the serf-coloni of the Codes. The first certain reference to a system of tenure essentially like that of the serf-colonate is to be found on the *saltus Burunitanus,* which was an imperial domain. It is easy to see, said Pelham, how a custom in force on the estates of the crown might become general throughout the whole Empire and eventually be incorporated in the law of the land. The imperial estates existed in all parts of the world and comprised a substantial part of all provincial land.[2] More important even than the

[1] *The Imperial Domains and the Colonate* (London, 1890). Also in his *Essays on Roman History* (Oxford, 1911), pp. 275-299, to which we refer.

[2] Pelham, *op. cit.*, pp. 278, 282. *Cf.* Garsonnet, *Locations perpétuelles,* pp. 148-149.

ubiquity of the domains was the unity of their management from generation to generation. A *perpetua forma* such as that in force on the *saltus Burunitanus* could hardly have developed on private estates which frequently changed hands, especially since a perpetual tenure such as this was not recognized by law. So far as the imperial coloni themselves were concerned they found themselves the most favored of the small farmer class. They were largely exempt from municipal burdens [1] and were under the especial protection and care of the imperial administrators. But if they still legally had the right of leaving their holdings, there is no doubt that any general migration of coloni would have been strongly discouraged by the imperial authorities.[2]

The only full description of the position of the coloni on an imperial domain is to be found in the inscription of Souk-el-Khmis.[3] But other brief descriptions, which were being found yearly in Africa, mention coloni on other imperial estates in Africa evidently in a condition similar to that of the coloni of the *saltus Burunitanus*.[4] Also the recent discovery of a series of inscriptions in Asia Minor, dating from 218 A. D., revealed the existence of a large imperial domain in south-eastern Phrygia which seemed to be organized in much the same way as the *saltus Burunitanus*. At least the inscriptions mention a working population (δῆμος Ὀρμηλέων), an imperial *procurator* (ἐπίτροπος) and *conductores* (μισθωταί). The "people of the Ormeleis" were grouped into three villages, each of which had a headman (προάγων) who corresponded to the *magister* of the coloni of the *saltus Burunitanus*.[5] Pelham concluded, therefore, that the condition of

[1] *Cf. supra*, p. 147.

[2] Pelham, *op. cit.*, pp. 277-282, 292.

[3] *Ibid.*, pp. 282-287.

[4] *Cf. C. I. L.*, viii, 587; 8701; 8702; 8777.

[5] *C. I. L.*, viii, 10570; iv, 25-29. "Feliciter consummata et dedicata

the coloni on the *saltus Burunitanus* was typical of the condition of the coloni everywhere on the imperial domains throughout the Empire.[1]

What was the origin of the type of tenure which existed on these imperial domains? The Digest contains only a little information about the *coloni Caesaris* for it is mainly concerned with the coloni of an entirely different type, who held a short-term lease and paid a money rent. But in the *Liber Coloniarum*.[2] Pelham believed that more valuable information could be obtained. In this work several references were made to the settlement of coloni by Vespasian, Trajan, and Hadrian in Campania in a manner which Pelham maintained was different both from the old method of Roman colonization and the terminable lease described in the Digest. The coloni were designated as *coloni imperatoris, coloni sui,* or *coloni eorum* (*imperatorum*) and the lands upon which they were settled were apparently imperial domains.[3] It is significant also that these settlements were made by Vespasian, Trajan, and Hadrian, "those emperors to whom was due an heroic and partially successful effort to replace the extravagance of the Neronian age by careful economy and to husband and develop resources which recent experience had shown to be no longer inexhaustible."[4] The imperial domains were surveyed and reorganized under a

... cura agente C. Julio ... ope Salaputi magistro." For the text of the Ormelian inscriptions see Sterrett, *An Epigraphical Journey in Asia Minor* (Boston, 1888), pp. 48-57.

[1] *Op. cit.*, pp. 287-289.

[2] Included in Lachmann's edition of *Gromatici veteres*, vol. i.

[3] *Gromatici veteres*, i, p. 230. "Coloni vel familia imperatoris Vespasiani iussu eius acceperunt," p. 236, "Colonis et familiae (Vespasiani) est adiudicatus (ager);" p. 235, "Imp. Hadrianus colonis suis agrum adsignari iussit"; p. 236, "Ab imperatoribus Vespasiano, Traiano et Hadriano ... colonis eorum adsignatus."

[4] Pelham, *op. cit.*, p. 290.

system of *procuratores* and intense efforts were made to maintain cultivation and check the desertion of the fields. The lands were leased to large capitalist lessees, or *conductores,* as on the *saltus Burunitanus,* while the labor force was comprised of coloni, who sublet the land from the *conductores.* Slave labor was seldom utilized because it was both difficult to obtain and had already proved itself to be unprofitable. This system, inaugurated on the imperial domains of Campania, soon spread throughout the whole Empire and the first step in the direction of the serf-colonate was taken, that is the substitution of coloni holding their land according to the terms of *perpetuae formae* for tenants possessing the terminable leases described in the Digest.

The coloni on the imperial domains might be natives or poor Italian emigrants. Later barbarians were settled on the imperial domains in substantially the same condition as the imperial coloni. In all cases liberty of movement must have been confined at least within the limits of certain districts, while the authority of the *procurator* over the coloni must have been unquestioned. The condition of the coloni was not ruled by law, as set forth in the Digest, but by imperial regulations which were coming to have more and more the force of law. The wide distribution of these domains gave this law a still more general character. But with the late Empire the increasing centralization of the government and the declining energy which was manifesting itself throughout all society brought about measures of more comprehensive scope. The coloni everywhere were bound to the soil while the same hereditary adscription was applied to the gilds, the army, and the decurionate. But the later legislation was really nothing more than an extension of the economic policy of the earlier emperors, especially of Hadrian, in their attempt to maintain and develop agriculture on their own domains. The position of the *coloni*

Caesaris and the regulations in force governing the imperial domains served as the prototype for the colonate legislation of the late Empire.[1]

Pelham added a real contribution to the explanation of the origin of the colonate by showing that there was an historical connection between the imperial policy on the fiscal domains of the second century and the colonate legislation of the Codes. Neither policy was primarily related to the more or less ephemeral changes in tax administration, as previous writers had urged, but both were caused by the fundamental necessity of checking decline in agricultural production and in conserving natural and human resources. Esmein and Glasson, and to a certain extent Fustel de Coulanges, had emphasized the factor of oppression and illegal encroachments on the part of proprietors and imperial functionaries which they believed gradually brought about the immobilization of status of the peasantry. But the paternalistic policy of the wiser emperors, stressed by Pelham, was probably more important in leading to permanence of conditions on the domains than the element of oppression. The coloni on the *saltus Burunitanus* did not leave their holdings because, notwithstanding the encroachments of the *conductores,* they felt that they were in a more favorable position there than they would be if they should leave and try to establish themselves elsewhere.

The weakest part of Pelham's argument lay in the conclusions which he drew from the settlements of Vespasian, Trajan, and Hadrian in Campania. The texts are so brief that they offer no clue in regard to the condition of the coloni on these Italian domains of the crown. The expressions "*coloni imperatoris*" or "*coloni sui*" are certainly no more illuminating than the similar expressions in regard to

[1] Pelham, *op. cit.*, pp. 294-295.

the coloni of Catiline [1] or of Domitius Ahenobarbus [2] during the Republic. So far as most of the provinces were concerned Pelham was probably right in affirming that the conditions on the imperial domains were followed by the private possessor; for in most provinces the imperial domains included a very considerable proportion of the total land of the province. It Italy, however, the imperial domains were relatively much smaller and probably differed little from the private estates in their organization and development.[3] It is possible that the imperial domains were more carefully administered than the private estates and that an hereditary tenantry developed on them first. Yet it seems improbable that there was as great a distinction between the estates of the crown and those of private possessors as Pelham imagined. It is true that many private *latifundia,* especially in Italy, were pleasure estates,[4] yet the more far-sighted proprietors followed much the same policy as the imperial administration. An African inscription, discovered several years after Pelham's essay appeared, shows that private *domini* attempted to keep a permanent peasant population on their land by inducements of all kinds.[5] Private proprietors no less than emperors were beginning to realize that the resources of the Empire were not inexhaustible [6] and that a policy of conservation must be followed before it was too late.

Yet a system of tenures under *perpetuae formae* was only

[1] Sallust, *Catil.*, 59.

[2] Caesar, *Bel. Civ.*, i, 34; i, 56.

[3] *Cf.* Rostowzew, art. "Kolonat," in Conrad's *Handwörterbuch der Staatswissenschaften*, v, p. 917.

[4] *Cf.* Simhkovitch, *Pol. Sci. Quart.*, xxxi (1916), p. 219; Heisterbergk, *Die Entstehung des Colonats*, pp. 67-68.

[5] *Cf. infra*, pp. 173, 175, 179.

[6] Pelham, *op. cit.*, p. 290.

a step in the direction of the serf-colonate. The colonate legislation was much more than an extension of imperial regulations on the emperor's estates to the Empire at large, as Pelham explained it. In the second century the imperial coloni, as well as many coloni of private possessors, were kept on their holdings by the fact that they felt themselves better off there than elsewhere on account of the many inducements offered them to remain.[1] But in the fourth century the coloni were bound to the soil by force. The end sought by the imperial administration was the same in each instance, but the means were different. What brought about the change of policy? This is the vital question in explaining the colonate legislation of the fourth century and this question Pelham did not answer.

[1] *Cf. infra*, pp. 173, 175, 181-182, 292-294.

CHAPTER VI

The African Inscriptions and the Colonate:

II. 1892-1907

In 1892 another long African inscription was brought to light, four years later a third was discovered, and finally in 1906 still another inscription was added to the list. The oldest and most important of these was the inscription of Henchir Mettich, discovered in 1896. It was an imperial regulation for the fundus of *Villa Magna Variani,* or *Mappalia Siga,* as it was called by the natives, issued by two imperial *procuratores* at Carthage, under the authority of "*Imp. Caes. Trajani Aug. Optimi Germanici Parthici.*" [1] Trajan was given the surname *Parthicus* by the Senate in 116 A. D. and as he died in 117 we can be relatively sure that the inscription can be assigned to one of these years.[2] The inscription was engraved on the four faces of a large rectangular stone, and, although it is badly mutilated in certain places, it is nevertheless able to give a fairly adequate description of conditions on an African estate in the early part of the second century.

The frequent mention of *vilici* in the inscription as well as the reference to *servis dominicis* [3] indicates that there were slaves on the estate, in all probability cultivating the demesne under the direction of the *vilicus* or steward. But

[1] i, 1-4. For text see Bruns, *Fontes,* 7th ed., no. 114; Toutain, *Mém. à l'Acad. des Inscr.,* xi, 1, pp. 31 *et seq.*

[2] Toutain, *op. cit.,* p. 44.

[3] Bruns, *Fontes,* 114, iv, 39.

the inscription is principally concerned with the coloni, who seemed to be universally occupying share-rent tenures like the coloni of the *saltus Burunitanus*. The amount of the rent varied somewhat for the different products but was approximately one-third of the crop. In the words of the regulation,

As for those who have or will have holdings within the limits of the *fundus* of *Villa Magna*, that is *Mappalia Siga*, they ought to pay either to the *domini* or to the *conductores* or to the *vilici* of this *fundus* in entirety the shares of the fruits or of the products of the vine which the *consuetudo Manciana* has fixed for each of the categories which it includes: for wheat a third of the harvest after threshing; for beans a fourth (or a fifth *qu . . . . tam*) after shelling; for vines a third of the product drawn from the vat; for olive oil, a third of the finished product; for honey a *sextarius* (about a pint) for each hive.[1]

Then follow some slightly mutilated passages which seem in general to indicate that if anyone possessed more than five hives of bees he would have to pay a somewhat augmented rent, while anyone attempting to defraud the estate by taking his hives of bees outside the *fundus* would be punished by the confiscation of the bees and honey.[2] Figs were to be dried and then divided, but in what proportions it is impossible to tell from the garbled state of the inscription.[3]

[1] *Ibid.*, i, 20-30. "Qui (i)n f(undo) Villae Magnae sive Mappalia Siga villas habent habebun(t), dominicis ejus f(undi) aut conductoribus vilicisv(e) eorum in assem partes fructum et vineam ex consuetudine Manciane, cujusque generis habet prestare debebunt; tritici exaream (pa)rtem tertiam; hordei exaream partem tertiam; fabe exaream partem qu . . . tam; vinu de laco partem tertiam; ole(i co)acti partem tertiam; mellis in alve(is) mellaris sextarios singulos."

[2] *Ibid.*, ii, 1-3.

[3] *Ibid.*, ii, 13-17. "Ficus aride ar(b)o(rum earum)que extra pom(a)rio erunt, qua pomariu(m . . . . . in)tra villam ips(am) sit, ut non amplius q(. . . . pe)rcipiat colonus arbitrio suo; co(. . . .)ci conduct(o)ri vilicisve ejus f(undi) d(are) d(ebebit)."

If the colonus plants a fig orchard he will be permitted to dispose of the product as he pleases for five harvests; but after the fifth harvest he should give to the *conductores* or to the *vilici* of the *fundus*, the share fixed by the *lex Manciana* and indicated above. It is permitted to plant and cultivate new vines in the place of old vines on the following conditions: during the first five vintages the product of the vines shall be left to the disposal of the man who planted them; but after the fifth vintage from the time of planting a third of the product should be given in accordance with the *lex Manciana* to the *conductores* or to the *vilici* of the said *fundus*. It is permitted to plant and cultivate an olive orchard in a place which was before altogether uncultivated, under the following conditions: during ten harvests from the time of planting, the colonus can dispose of the product of this olive orchard as he pleases; then he should give a third of the olive-oil produced to the *conductores* or *vilici* of the said *fundus*. But he who has grafted wild olive trees should give the same third of this product at the end of five years.[1]

By encouragements such as these the productive capacity of the domain was doubtless augmented and the tendency of the peasants to remain on their holdings for indefinite periods was considerably furthered.[2] When a tenant had

[1] *Ibid.*, ii, 20- ii, 12. "Si quod ficetum ... factum erit, ejus fic(eti) fructum per continuas ficationes quinque arbitrio suo eo qui seruerit percipere permittitur, post quintam ficationem eadem lege M(anciana) qua s(upra) s(criptum) est conductoribus vilicisve ejus f(undi) p(restare) d(ebebit). Vineas serer(e) colere loco veterum permittitur ea condicione (ut) ex ea satione proximis vindemi(i)s quinque fructu(m) earum vinearum is qui ita fuerit suo arbitr(i)o percipeat, itemque post quinta vindemia quam ita sata erit, fructus partes tertias e lege Manciana conductoribus v(ilicisve)e ejus ... dare debebu(nt. O)livetum serere colere in eo loco qua quis incultum excoluerit permittitur ea condicione ut ex ea satione ejus fructus oliveti, quid ita satum est, per olivationes proximas decem arbitrio suo permittere debeat, item post olivationes ole(i) coacti partem terti(am) conductoribus vilicisve ej(us fundi) d(are) d(ebebit). Qui inseruerit oleastra post (olivationes quin) que partem tertiam d(are) d(ebebit)."

[2] *Cf.* Heitland, *Agricola*, p. 344.

set out fruit trees or vines and was receiving the product of them rent-free he was not likely to desert his land. Yet such desertion did occasionally take place, as is shown by the following clause of the regulation.

If a colonus after he had cultivated a certain plot of land which formerly was uncultivated, and after he has built or rented a construction there, then deserts it and abandons it completely, from the time when the desertion has taken place, he who had or will have had the right to cultivate this field, keeps or shall keep this right for two years from the day when he has ceased to cultivate it; after two years this right shall pass to the *conductores* or to the *vilici* of the said *fundus*. . . . As for land which was cultivated during the preceding years and then has been abandoned the *conductor* or the *vilicus* of the said *fundus* should make known the fact that the field has been abandoned and should announce it in a formal report, and the next year he should do the same thing, and if after two years no protest has been made, the *conductor* or *vilicus* should arrange to put the field in cultivation.[1]

Besides paying the *conductores* a certain share of the product, the coloni of the *fundus Magna Villa Variani* like those of the *saltus Burunitanus* and the estate mentioned in the inscription of Gazr-Mezuâr, were required to furnish a certain number of days' services on the demesne every year during the busy season.

[1] Bruns, *Fontes*, 114, iv, 10-12. "(Qui su)perficiem ex inculto excoluit excoluer(it....e)t aedificium deposuit posuerit, elocavit(....si) desierit perdesierit, eo tempore quo ita ea superfi(cies) coli desit desierit, eo quo fuit fuerit jus colendi, dumta(xa)t bienn(i)o proximo ea qua die colere desierit, servatu(r) servabitur; post biennium conductores vilicisve eo(rum....E)a superficies que proximo annos culta fuit et coli (desie)rit, conductor vilicusve ejus f(undi) ea superficies esse d(.....)ua denuntiet superficiem cultam ejus non egis nav(.....)denuntiationem denuntiatur(.....) Siga iis testa(.....)s; itemque nnsequentem(*sic*) annum (....et si vac)at ea sine quer(el)a ejus f(undi) post biennium conductor vilicusve cole(re ju)beto."

The coloni who dwell within the *fundus Villa Magna,* that is *Mappalia Siga,* will each be obliged to furnish to the *domini,* the *conductores,* or will *vilici,* two days' service every year in plowing, the same amount in harvest, and two days' service for each other kind of work.[1]

The inscription also deals with the cultivation of waste lands outside of the estate which were known as the *subcesiva.* Coloni of the *fundus* proper were permitted to take up holdings in the *subcesiva* and cultivate them, in return for rent in shares, in accordance with the little understood right of *usus proprius* which was included in the *lex Manciana.*[2] Gsell interpreted *usus proprius* to mean the right which was granted to the squatter colonus of providing for his subsistence and that of his family from the products of the *subcesiva,* while the surplus was divided with the *conductor* of the *fundus* according to an agreed ratio.[3] Whether *usus proprius* gave the coloni hereditary rights on their clearings is a problem which has aroused an enormous amount of discussion, but the weight of opinion seems to lie with those who believe that the coloni had no hereditary rights on the waste land before they were granted by *lex Hadriana de rudibus agris* mentioned in later inscriptions.[4]

[1] *Ibid.,* iv, 23-27. "Coloni qui intra f(undum) Ville (Magne sive Mappalie) Sige ha(bit)abunt dominis aut conduc(toribus vilicisve) in assem (qu)odannis in hominibus (singulis in arati)ones operas n(umero) II et in messem op(eras et in curas cujusque) generis singulas operas binas pr(estare debebunt)."

[2] *Ibid.,* i, 6-15. "Qui eorum (i)ntra fundo Villae Mag(na)e Variani id est Mappalia Siga, eis eos agros qui su(bc)esiva sunt excolere permittitur lege Manciana, ita ut eas qui excoluerit *usum proprium* habeat. Ex fructibus qui eo loco nati erunt dominis au(t) conductoribus vilicisve ejus f(undi) partes e lege Manciana prestare debebunt hac condicione coloni: fructus cujusque culture quota dare adportare et terere debebunt, summas (redd)ant arbitratu (s)uo conductoribus vilicis(ve ej)us f(undi)."

[3] *Mél. d'arch. et d'hist.* (1898), p. 109.

[4] *Cf.,* Toutain, *op. cit.,* p. 59; Gsell, *op. cit.,* p. 109; Cuq, *Mém. à l'acad.*

Likewise uncultivated land within the estate which had been reclaimed [1] was probably held by precarious tenure until it was made hereditary by the law of Hadrian.[2]

Besides the question of the rights of the coloni on reclaimed land another problem in the interpretation of the inscription of Henchir Mettich has called forth even more lengthy discussion. Was the *fundus* of *Villa Magna Variani* an imperial domain or a private estate, and consequently was the constitution governing the condition of the coloni, the *lex Manciana,* an imperial or a private regulation? The other African inscriptions all referred to imperial domains, so information regarding the coloni on the private *latifundia* is all the more eagerly sought. The inscription frequently mentions *domini* to whom together with the *conductores* and *vilici* the coloni owed their rents and services.[3] Manifestly *domini* could not refer to the emperor, the proprietor of the imperial domains, for the use of the plural *domini* must refer to several proprietors, not to a single one.[4] Likewise the *lex Manciana* could not have been an imperial regulation, since an imperial regulation, even though it were drawn up by *procuratores,* would have borne the name of an emperor, like the *lex Hadriana,* which later came to be in force on the imperial domains of Africa; and of course no provincial

des inscr., xi, 1, pp. 98-99; Pernot, *Mél. d'arch et d'hist.* (1901), pp. 71-72; Krüger, *Zeitsch. d. Savignystift.* (1899), pp. 271-272; Rostowzew, *Studien zur Geschichte des römischen Kolonates,* p. 347.

[1] Bruns, *Fontes,* iv, 10-13. "(Qui su)perficiem ex inculto excoluit excoluer(it) .... quo fuit fuerit *jus colendi.*" *Cf. supra,* p. 174.

[2] *Cf.* Toutain, *op. cit.*, pp. 60-61; Cuq, *op. cit.*, pp. 101-108; Rostowzew, *op. cit.*, p. 347.

[3] *Eg.*, Bruns, *Fontes,* 114, i, 9-13. "Ex fructibus qui .... *dominis* aut conductoribus vilicisve ejus fundi partes .... prestere debebunt ... coloni; iii, 19-20, "Conductoribus vilicisve *dominorum* ejus f(undi) prestare debebunt."

[4] Toutain, *op. cit.*, p. 45; Beaudouin, *Nouv. rev. hist. de droit fr.* (1898), p. 41; Seeck, *Zeitsch. für Sozial-u. Wirt.*, vi (1898), pp. 322-323.

magistrate would have had authority to prescribe regulations for an imperial domain.[1] Hence, in the opinion of Toutain and Beaudouin, the *fundus* of the *Villa Magna Variani* was a private estate.[2]

On the other hand, the regulation in the inscription was issued by two *procuratores,* who must have been imperial agents as the inscription specifically states that one of them was a freedman of the emperor.[3] If the *fundus* of *Villa Magna* was a private estate, as Toutain and Beaudouin affirmed, it is hard to understand why imperial *procuratores,* who were charged with the supervision of the emperor's provincial domains, should issue regulations governing it. So Schulten was led to reject the earlier hypothesis that the *fundus* was a private estate and to uphold the contrary view that it was an imperial domain.[4] But if the latter hypothesis be accepted how can the regulation of the unknown Mancianus or Mancia be explained, as well as the use of *domini,* both of which seem inconsistent with the theory that the *fundus* of *Villa Magna* was an imperial domain? The *lex Manciana,* Schulten held, was probably a law governing estates on the *ager publicus* issued by a Roman magistrate Mancia in the last century of the Republic, which after the Empire was extended to apply to all imperial estates. The word *domini* he believed was used synonymously with *conductores,* for like the emphyteutic tenants of the late Empire they were to all intents and purposes actual proprietors.[5]

The conclusion of Schulten that the *fundus* of *Villa Magna Variani* was an imperial domain, at least at the time

[1] Cuq, *op. cit.*, p. 143.

[2] Toutain, *op. cit.*, p. 45; Beaudouin, *op. cit.*, pp. 40-47.

[3] Bruns, *Fontes*, 114. i, 4-6. "Data a Licinio (Ma)ximo et Feliciore Aug. lib. procc. ad exemplu(m) (leg)is Manciane."

[4] *Abhandl. d. Gött. Ges. de. Wiss., Philol.-Histor. Klasse*, ii (1897), pp. 48-49.

[5] *Ibid.*, pp. 21-22, 44.

of the inscription of 116-117 A. D., has been generally accepted by commentators on the inscription of Henchir Mettich whose works have appeared subsequently to Schulten's essay.[1] But his far-fetched identification of *domini* and *conductores* has been universally rejected. Aside from the fact that the words proprietor (*dominus*) and lessee (*conductor*) are never confounded, the inscription of Henchir Mettich itself is always careful to distinguish the *domini* from the *conductores* and the *vilici*. The interpretation of Cuq[2] seems to harmonize the apparently contradictory features of the inscription considerably more successfully. The *lex Manciana*, he said, was an old regulation of the Republic which governed conditions on the estates formed from the *ager publicus*, whether they were public or private domains and whether they were managed by their own proprietors (*domini*), by lessees (*conductores*), or slave stewards (*vilici*).[3] The *fundus* of *Villa Magna Variani* had

[1] Cuq, *op. cit.*, p. 141; Gsell, *op. cit.*, p. 108; Seeck, *op. cit.*, p. 323; Rostowzew, *op. cit.*, pp. 324, 328; Heitland, *Agricola*, p. 343.

[2] *Op. cit.*, pp. 143-145. This has been substantially followed by Gsell (*op. cit.*, p. 108) and Pernot (*op. cit.*, pp. 78-79).

[3] Cuq reached his conclusion as to the date of the *lex Manciana* in a different way from Schulten. Certain legal expressions employed in the inscription were common in the time of Cicero but had been succeeded by others by the time of Trajan (Cuq, *op. cit.*, pp. 144-145.) In addition, he argued, a general regulation such as the *lex Manciana* which favored both the native cultivators and the general development of agriculture might very likely have been promulgated at the beginning of the period when Rome began seriously to exploit the fertile African lands (*ibid.*, p. 145).

Rostovtzeff argued with considerable plausibility that the *lex Manciana* was drawn up by an imperial legate to Africa under Vespasian as a unifying ordinance to restore order after the confusion caused by the enormous confiscations of Nero (*op. cit.*, pp. 325-330). But if such a regulation was necessary, why was it not called the *lex Vespasiana*, especially since, as Rostovtzeff himself holds (*op. cit.*, p. 338), the later *lex Hadriana* was merely a modification of the earlier and more comprehensive *lex Manciana*?

It is possible, of course, that the regulation might have been issued by

long been a private estate owned by a Varianus and his successors, but recently it had become an imperial domain. The regulation of the *procuratores* in the inscription of Henchir Mettich *ad exemplum legis Mancianae*[1] was for the purpose of adapting the *fundus* to the new régime and at the same time of assuring the coloni that the rules of the *lex Manciana* would continue in force. In quoting from the old regulations frequently the old expression *domini, conductores, vilicive* was retained, even though in the case of the *fundus* of *Villa Magna Variani* it was superfluous. Thus the use of *domini* in the inscription does not prove, as Toutain and Beaudouin had thought, that the *fundus* of *Villa Magna* was a private estate. But it does bring to light the very important fact that the *lex Manciana* was a general law which could be applied to private possessions as well as imperial domains; and that the condition of the African coloni did not differ materially on the private estates and the imperial domains, as Pelham had believed.

The theory that the *lex Manciana* was a general law and not a private regulation for a single estate was strongly substantiated by the discovery of a later inscription at Ain-el-Djemala in 1906, ten years after the inscription of Henchir Mettich was found. The inscription, which is of the time of Hadrian (117-138 A. D.), begins with a petition which a group of peasants had sent to the imperial *procuratores*. These peasants requested that they be granted the privilege which the coloni of the neighboring *saltus Neronianus* already enjoyed of reclaiming swampy and wooded

a proconsul Mancia under Augustus or even Tiberius; for Africa was a senatorial and not a Caesarian province and its administration retained for some time the characteristics of the Republic. *Cf.* McFayden, "The Princeps and the Senatorial Provinces," *Class. Philol.*, xvi (1921), pp. 34-50.

[1] i, 5-6.

lands[1] in accordance to the terms of the *lex Manciana*.[2] Their request was granted and all waste land, as well as land which was wooded and swampy, in four imperial domains, the *saltus Blandianus, Udensis, Lamianus,* and *Domitianus* was made available for assignment to anyone who wished to reclaim it "in accordance with the *lex Manciana*."[3] The references to the *lex Manciana* in the inscription of Ain-el-Djemala thus lend support to the conclusion already reached by the majority of the commentators on the inscription of Henchir Mettich that the *lex Manciana* was not merely a regulation governing the relations of the *fundus* of *Villa Magna Variani* but was instead a general law with jurisdiction over several estates and probably the whole province.[4]

In the inscription of Ain-el-Djemala the *procuratores* not only granted the petition of the peasants to make use of the privileges of the *lex Manciana* but they also took this occasion to apply a new regulation of the present emperor Hadrian to the four imperial domains, the *saltus Blandianus, Udensis, Lamianus,* and *Domitianus*. By a rather remarkable coincidence the communication of the *procuratores* (*sermo procuratorum*) which applied the law of Hadrian to these domains is almost identical word for word with the *sermo procuratorum* of the inscription of Ain Ouassel, which had been discovered in 1892, not far from the place where the inscription of Ain-el-Djemala, was found fourteen years later. The inscription of Ain Ouassel is a much later document than the inscription of Ain-el-Djemala, as it dates from the reign

[1] Bruns, *Fontes*, 7th ed., 116, i, 5-6. "... (agros) qui sunt in paludibus et in silvestribus."

[2] *Ibid.*, i, 7. "...lege Manciana condicione."

[3] *Ibid.*, iv, 8-10. "Si qui agri cessant et rudes sunt, si qui silvestres aut palustres in eo saltuum tractu (*i. e.* ii, 10-13, saltus Blandianus et Udensis et illae partes quae ex saltu Lamiano et Dom(i)tiano iunctae Thusdritano sunt) volentes lege Manciana colere ne prohibeas."

[4] *Cf.* Schulten, *Klio*, vii (1907), p. 201.

of Septimius Severus (193-206 A. D.), three quarters of a century after the time of Hadrian. But it was carved on an altar erected to the memory of Hadrian, and contains in the *sermo procuratorum* an *exemplum legis Hadrianae de rudibus agris,*[1] so far as it applied to the *saltus Blandianus, Udensis, Lamianus,* and *Domitianus.* The *sermo procuratorum* is somewhat mutilated in both the inscription of Ain Ouassel and Ain-el-Djemala, but the uninjured portions of the one have served to restore gaps in the other, and the result is a fairly complete copy of the *lex Hadriana de rudibus agris* as it was adapted to the four imperial domains.

The *lex Hadriana* provided in the first place that all land which had never been put in cultivation by the *conductores* or land which had been abandoned for ten years was to be open for occupation, and those who reclaimed these lands should receive full rights of possession, enjoyment, and bequest over them.

Since our emperor, because of the indefatigable care which he is constantly exercising in behalf of the welfare of his subjects, has ordered all lands to be cultivated which are suitable for the growing of olives, vines, or grain, therefore permission is granted to everyone to occupy the lands which are divided in *centuriae*[2] of the *saltus Blandianus* and *Udensis,* and of the parts of the *saltus Lamianus* and *Domitianus* which are joined to the *saltus Thusdritanus* and are not being cultivated by the *conductores*; and to those who occupy these lands the right of possession, of enjoyment, and of transmission to their heirs is hereby granted, which right is included in the *lex Hadriana* in regard to waste land and land which has remained uncultivated for ten successive years.[3]

[1] Bruns, *Fontes,* 7th ed., no. 115, i, 7-8; ii, 10-11.

[2] Surveyed land in plots of 200 or 240 *jugera. Cf.* Siculus Flaccus in *Gromatici Veteres,* ed. Lachmann, i, pp. 154-156, 159.

[3] Ain Ouassel i, 9-ii, 13; Ain-el-Djemala ii, entire. "Quia Caesar noster pro infatigabili cura per quam adsidue pro humanis utilitatibus

Tenants who took up holdings on waste or deserted land and brought them under cultivation were required to pay the "customary third part of the fruits."[1] But as in the case of the *lex Manciana* certain exemptions were given.

As for olive trees which anyone sets out in trenches or grafts on wild olive trees, no part of the fruit gathered will be demanded for the first ten years; and for other fruits for the first seven years; and only those fruits will fall to the division (*i. e.* pay a share as rent) which will be sold by the possessors. As for the shares of dry crops[2] which each tenant will be obliged to pay, he shall pay those for the first five years to him under whose lease he has occupied the land; and after that time to the account (of the *fiscus*).[3]

The commentators on the new African inscriptions did not limit themselves to clarifying obscure passages in the inscrip-

excubat omnes partes agrorum quae tam oleis aut vineis quam frumentis aptae sunt excoli iubet, idcirco permissu providentiae eius potestas fit omnibus etiam eas partes occupandi quae in centuris elocatis saltus Blandiani et Udensis et in iis partibus sunt quae ex saltu Lamiano et Dom(i)tiano iunctae Thusdritano sunt nec a conductoribus exercentur; isque qui occupaverint possidendi ac fru(en)di eredique s(u)o relinquendi id ius datur quod et lege Ha(dria)na comprehensum de rudibus agris et iis qui per X an(n)os continuos inculti sunt."

[1] Ain Ouassel iii, 2-4; Ain-el-Djemala iii, 3-5. "...quae (dari so)lent tertias partes fructuum (da)bit."

[2] Probably grain, as most commentators hold. *Cf.* Carton, *Revue archéol.*, xxi (1893), p. 26; Schulten, *Hermes*, xxix (1894), p. 214; Carcopino, *Mél. d'arch. et d'hist.*, xxvi (1906), p. 457; Heitland, *Agricola*, p. 350. Mispoulet, however, translates "partes aridas fructuum" as "the rents of desert lands." *Nouv. rev. hist. de droit fr.*, xvi (1892), p. 121.

[3] Ain Ouassel, iii, 7-18; Ain-el-Djemala, iii, 8-12. "De oleis quas quis(que aut in scro)bibus posuerit aut oleastris (inse)ruerit, captorum fructuum nul(la pars) decem proximis annis exiget(ur); set nec de pomis septem annis proximis; nec alia pom(a) in divisione(m) umquam cadent qu(a)m quae venibunt a possessoribus. Quas partes aridas fruct(u)um quisque debebit dare, eas pr(o)ximo buinquennio (*sic*) ei dabit in cuius conductione agr(um) occupaverit; post it tempus rationi."

tions, but many of them attempted to determine the relation which the *lex Manciana* and the *lex Hadriana* bore to the agricultural policy of the imperial administration and especially to the problem of the origin of the serf-colonate. Mispoulet, the first commentator on the inscription of Ain Ouassel, like Mommsen who first discussed the inscription of Souk-el-Khmis, doubted whether the second-century inscriptions threw any light upon the origin of the colonate, which he regarded as exclusively a fourth-century institution, the result of the universal immobilization of status of the time.[1] But Carton, the next writer on the inscription, believed that the inscription of Ain Ouassel offered a real clue to the explanation of the origin of the colonate. This was the method of putting waste lands in cultivation which was inaugurated by the *lex Hadriana*.[2]

The Emperor Hadrian, as is well known, was a great traveler, and in his journeys through the provinces he must have been seriously concerned over the large amount of uncultivated land to be found even in fertile grain provinces like Africa. Consequently, when he drew up a general regulation for his provincial domains, he included a chapter which concerned itself with the reclamation of waste lands. Many inducements were offered to peasants of all conditions to take up holdings on the waste lands as partiary tenants of the crown, but so far as the cultivators themselves were concerned the most important provision of the law was the *jus heredi relinquendi*, for this made them eventually hereditary tenants on the imperial domains. It was a condition not at all unfavorable to the tenant at first, but as generation followed generation in the same condition the custom of cultivating the same plot of state land crystallized into obligation. The civil and religious wars of the third and fourth

[1] *Nouv. rev. hist. de droit fr.*, xvi (1892), p. 124.

[2] *Revue archéologique*, xxi (1893), pp. 21-39.

centuries and the disorder and devastations which followed in their wake ruined many of the state tenants and made it impossible for them to pay their rents. The arrears in rents accumulated and when the fathers died the burden of the debt was passed on to the sons. The latter could not leave the land, for their only means of maintaining a livelihood in those troubled times lay in their inherited plots of land, debt-ridden though they were. Finally, with the increase of internal warfare and confusion, the colonate proper was definitely established. The *lex Hadriana* itself did not create the colonate, said Carton, but it formed an hereditary status which the anarchy and civil wars of the third century transformed into the serf-colonate of the Codes.[1]

The theory of Carton, as to the important rôle of the *lex Hadriana* in the development of the colonate, was substantially followed by Carcopino, the first commentator on the inscription of Ain-el-Djemala.[2] The ancestors of the serf-coloni of the Codes were not the coloni on the domains, he said, but the state-tenants who reclaimed waste lands under the favorable terms of the *lex Hadriana*. Originally they must have been peasants with a certain amount of capital for they planted their holdings at their own expense with olives and vines, fruits which do not yield a crop for several years. But in the late Empire their fortunes declined and they were transformed from partiary tenants into serf-coloni, not on account of the devastations of war, as Carton had maintained, but through the general "economic decadence" (*décadence économique*) of the times.[3]

With the discovery of the inscription of Henchir Mettich, Cuq[4] connected the origin of the colonate with the earlier

[1] *Ibid.*, p. 38.

[2] *Mél. d'arch. et d'hist.*, xxvi (1906), pp. 365-481.

[3] *Ibid.*, pp. 403, 480.

[4] *Mém. à l'acad. des inscrip.*, xi, 1 (1897), pp. 83-146.

lex Manciana, which he believed was a regulation of the Republic.[1] The African coloni, who were under the jurisdiction of the *lex Manciana,* were by no means serf-coloni, he said, yet the result of the law was to bring about permanence of conditions on the African estates. The proprietors might change, or a private estate might be converted into an imperial domain, but the condition of the coloni remained the same. The result of this was to cause the coloni to be regarded as an integral part of the estate, who went with it whenever the estate was sold or alienated in any way. Finally, in the interests of the treasury, the coloni were forbidden to leave the estate which their ancestors had freely consented to cultivate.[2]

A much greater contribution to the treatment of the historical development of the coloni was made by Schulten, who besides publishing commentaries on all three of the African inscriptions discovered since 1890, discussed the origin of the colonate in two other essays.[3] In 1894 in an article on "Die Lex Hadriana de rudibus agris,"[4] Schulten expressed his approval of Carton's theory that the hereditary rights granted by the *lex Hadriana* constituted the first step toward the serf-colonate. Hadrian was the great organizer of the imperial domains and the origin not only of the colonate but of emphyteusis and ἐπιβολή can be traced to his domanial regulations.[5] But in subsequent essays Schulten developed a more comprehensive theory of the colonate.

[1] *Ibid.,* pp. 144-145.

[2] *Ibid.,* p. 146. "On finit, dans un intérêt fiscal, par leur défendre de quitter le fonds que leur ancêtres avaient librement consenti à cultiver." *Cf.* Cuq, *Les institutions juridiques des Romains* (Paris, 1902), vol. i, pp. 790-792.

[3] *Die römischen Grundherrschaften* (Weimar, 1896); "Der römische Kolonat," *Historische Zeitschrift,* lxxviii (1897), pp. 1-17.

[4] *Hermes,* xxix (1894), pp. 204-230.

[5] *Ibid.,* pp. 224, 227.

The origin of the serf-colonate, said Schulten in his *Römischen Grundherrschaften,* is to be found in the gradual evolution of the status of the small tenant on the great estates.[1] Legally the coloni as late as the third century held short-term leases which they were under no obligation to renew. But in actual practice they tended more and more to become an hereditary and dependent tenantry. In the historical development of the tenant classes in Italy Schulten followed Fustel de Coulanges in stressing the importance of debt on the condition of the small tenant. Coloni who were not in arrears were perfectly free to leave their leaseholds at the expiration of their contract, but if they were in debt they could not leave unless they should happen to find someone who would be willing to offer bail for them.[2] Besides being retained by their debts, self-interest caused many peasants to remain on their landlord's estates, and Italian inscriptions show that coloni frequently cultivated the same plot of land for many years, if not for their whole lives.[3] There came to be very early a close connection between the coloni and the estate in which they lived and cultivated the soil. They were spoken of as the *coloni agri Caeli,*[4] the *coloni fundi Mariani,*[5] just as they were called the *coloni saltus Burunitani* in Africa.[6] They followed their landlord

[1] *P.* 94.

[2] *Histor. Zeitsch.*, lxxviii (1897), p. 7. Schulten relied on the same text in the Digest which had been formerly cited by Fustel de Coulanges. *Dig.*, xxxiii, 7, 20, 3. "... colonorum, qui finita conductione, *interposita cautione* ... discesserant." For the criticism which professors of Roman Law have raised against this use of *interposita cautione*, *cf. supra*, p. 162.

[3] *Cf. C. I. L.*, x, 1877. "Q. Justeio Diadumeno ... coluit annis XXXXV (176 A. D.); *C. I. L.*, ix, 3674. "Colonus fundi Tironiani quem coluit annis numero L."

[4] *C. I. L.*, vi, 9275.

[5] *C. I. L.*, vi, 9276.

[6] Schulten, *op. cit.*, p. 8.

to battle in the civil wars,[1] and even Catiline in his desperate cause was supported by his coloni.[2] The landlords were always trying to find ways of getting the maximum amount of work out of their tenants and beginning with the first century after Christ a change from a money rent to a share rent tenure was begun on private estates;[3] and this change proved an important step in the direction of the serf-colonate.[4]

However, as the *partiarius colonus* is only mentioned once in the Digest,[5] it is doubtful whether the share colonate was ever very extensive on the estates of private individuals. But if unusual in the sphere of private law, the share rent system seems to have been generally practiced on the imperial domains, at least in the provinces.[6] It was not a native Italian institution. It was first met by the Romans when they conquered the Hellenistic land of Sicily. Later when they spread their conquests eastward the Romans found that in other Hellenistic lands, such as Asia Minor, the realm of the Seleucids and the Attalids, and Egypt, the kingdom of the Ptolemies, the same share-rent system was in common usage. As it was the Roman provincial policy to change the economic organization of the conquered lands as little as possible, it is very probable that the Hellenistic practice of share rent was adopted generally on the imperial domains.[7]

The African inscriptions presented a clear picture of a dependent tenantry paying rent in shares under the super-

[1] Caesar, *Bel. Civ.*, i, 34; 56.

[2] Sallust, *Catil.* 59.

[3] Plin., *Epist.*, ix, 37.

[4] Schulten, *op. cit.*, p. 9.

[5] *Dig.*, xix, 2, 25, 6.

[6] Schulten, *Abhandl. d. Gött. Ges. d. Wiss., Philol.-Histor. Klasse* ii (1897), p. 45.

[7] *Ibid.*, p. 46.

vision of administrative officials. While not legally bound to the soil they were held there by bonds of custom which they found impossible to break, even when they were oppressed by the *conductores* and the *procuratores*. One element of great significance in their condition was the fact that since the proprietor of the imperial domains was the emperor, domanial regulations came to have the force of imperial law.[1] In Africa the *lex Manciana* had proved an important measure in regulating the share rent of the coloni and in offering all sorts of inducements to bring waste land under cultivation. Still more important was the *lex Hadriana* which introduced the principle of hereditary tenures on the imperial domains and extended the right of reclamation to all uncultivated land within the estate as well as waste land. It was a step in the direction both of the serf-colonate and emphyteusis and showed that the administration was ready to make far-reaching innovations in order to maintain the cultivation of the soil. Under these imperial regulatios the coloni gradually lost their character as tenants and became imperial peasants (*kaiserliche Leute*) pure and simple.[2]

By the third century the coloni even on private estates had become so closely identified with the estates that the jurist Marcian said that they could not be bequeathed without the estate to which they were attached,[3] while a passage from the *Sententiae* of Paulus showed that the colonus like the slave *actor* might be included in the inventory of an estate.[4] Yet

[1] Schulten, *Grundherrschaften*, pp. 96-97. *Cf. Vorwort.*, "Auf den kaiserlichen Domänen ist der Pächter zum an die Scholle gebundene Colonen geworden, weil sich hier privates and öffentliches Recht in einem fort durchkreuzen."

[2] *Ibid.*, p. 96. *Cf.* Schulten, *Hermes*, xxix (1894), pp. 224, 227; *Klio*, vii (1907), pp. 201-203.

[3] *Dig.*, xxx, 1, 112, *pr.* "Si quis inquilinos sine praediis, quibus adhaerent, legaverit: inutile est legatum."

[4] *Sent.*, iii, 6, 48. "Actor vel colonus ex alio fundo in eodem constitutus, qui cum omni instrumento legatus erat, ad legatarium non pertinet, nisi eum ad ius eius fundi testator voluerit pertinere."

the coloni were not legally attached at this time for a rescript of Philip of 244 A. D. said that they could not be retained on a landlord's estate after they had fulfilled the terms of their lease.[1] Legally the *glebae adscriptio* came only with the fourth century. Economicaly it had come long before, developing first on the imperial domains. But, in the fourth century, in the interests of taxation the coloni were legally bound forever to the soil and the domanial regulations of the first and second centuries were transformed into imperial laws affecting the tenantry of the entire empire.[2]

Schulten's theory was followed very closely in 1897 by Beaudouin in his *Les grands domaines dans l'empire romain.*[3] The colonate, he said, was primarily the result of the historical development of the tenantry on the great estates. A perpetual tenantry was an ideal set forth by Columella in the first century but it had become an economic necessity on the imperial domains in the second century. The *lex Hadriana* introduced hereditary tenures on the estates of the emperor and finally the legislation of the fourth century made adscription to the soil universal. The last measure was merely an extension of a development which had already taken place on the imperial domains and was taken in the interests of the treasury. The most important source of revenue of the government was the land tax, while the income of private proprietors was chiefly derived from the rents of their coloni. So the perpetual and hereditary colonate of the imperial domains was introduced on the private estates in order to guarantee to the proprietors their rents and in turn to insure the government that the land tax would be regularly paid.[4]

[1] *Cod. Just.*, iv, 65, 11. "Invitos conductores (=coloni) seu heredes eorum post tempora locationis impleta non esse retinendos saepe rescriptum est."

[2] Schulten, *Grundherrschaften*, pp. 95-97.

[3] *Nouv. rev. hist. de droit fr.*, xxi (1897), pp. 692-715.

[4] *Ibid.*, pp. 695-700.

But aside from the development of a perpetual and hereditary colonate on the imperial domains, two other accessory causes had some influence in the formation of the universal colonate of the late Empire. One was the settlement of barbarians within the realm in the same condition as the imperial coloni, while the second was the use of native cultivators as dependent tenants on Roman provincial estates, such as the coloni of the African inscriptions.[1]

The first commentators on the African inscriptions had somewhat overstressed the importance of the information contained in them by maintaining that the serf-colonate could be traced ultimately to the *lex Manciana* or the *lex Hadriana*. The African colonate as regulated by these laws was far different from the tenant-colonate in Italy as described by the Digest, yet it was not the colonate of the Codes. Schulten and Beaudouin, while they emphasized the importance of the *lex Manciana* and *lex Hadriana* in developing a permanent and hereditary tenantry on the imperial domains, realized that further explanation was necessary to account for the colonate of the Codes, so they went back to the old taxation theory of Wallon and Revillout to explain the colonate as a universal institution. However the next writer, Seeck,[2] believed that there was still too large a hiatus from the hereditary tenantry of the second century to the tax reforms of the late Empire, so in 1901 he offered a new theory of the colonate.

Like the preceding writers Seeck believed that the colonate was closely connected with the depression in the status of the tenant classes, but he found that the historical development of the tenantry differed somewhat in different parts of the Empire. In Italy, the concentration of landed property

[1] *Ibid.*, pp. 701-708.

[2] Art., "Colonatus" in Pauly-Wissowa's *Real Encyclopädie der classischen Altertumswissenschaft* (Stuttgart, 1901), vol. iv, pp. 483-510.

into *latifundia* during the Republic and the importation of enormous masses of slaves as agricultural laborers almost completely destroyed the native peasant class. But the slave population soon declined in numbers and the relatively peaceful policy of the Empire brought in no fresh hordes of captives to make up for the loss. Soon proprietors found that they had an insufficient supply of labor to keep their estates in cultivation and they were obliged to seek free tenants as cultivators for their lands. However, as the old peasant stock had long since disappeared, the only available material for tenants was the dregs of the city proletariat.[1] But a farming class is not made in a day; and this city rabble proved wretched farmers. Slave *vilici* were set over them to see that they were up in time for work but their lack of energy and improvident habits soon caused them to fall into debt, from which they never seemed able to extricate themselves, notwithstanding the remissions of rent which the landlords occasionally granted. The result was that agriculture in Italy was far from profitable either to the tenant or the proprietor.[2]

In Africa the coloni apparently were in a considerably more vigorous condition in the first century under the *lex Manciana*. But during the second century Seeck believed that the decline in population which was already noticeable in other regions of the Empire commenced to make itself felt in Africa. The failing slave supply was unable to keep the demesne lands in cultivation and the *conductores* attempted to make up for the lack of slave labor by forcing the coloni to furnish more days' services than specified in the *lex Hadriana*. The *procuratores*, sympathizing with the *conductores* in their endeavor to maintain cultivation on the demesne, winked at their encroachments on the law and it was

[1] *Ibid.*, p. 488, "die Hefe des städtischen Proletariats."

[2] *Ibid.*, pp. 487-489.

only rarely that the coloni could obtain relief from the emperor, like the coloni of the *saltus Burunitanus*. The amount of deserted land increased steadily. The *lex Manciana* of the Republic had concerned itself only with the reclamation of waste land while the law of Hadrian opened all deserted land to cultivators, making the coloni who reclaimed it hereditary tenants of the crown. In 193 A. D. the Emperor Pertinax went a step farther than Hadrian and offered deserted land not as tenancies but in full ownership with a ten year tax exemption to anyone who guaranteed to keep it in cultivation.[1] Yet even laws as favorable as those of Hadrian and Pertinax seemed unable to check the depopulation which was threatening to take away all value from the land because of the lack of cultivators.[2]

In Greece conditions were worse than in any other province, for there depopulation had gone so far that two-thirds of the land was uncultivated.[3] In Egypt alone the population held its own, but because of the great demands on the province from the rest of the Empire the position of the Egyptian tenant was anything but a desirable one. The holdings of land were very small and intensively cultivated while the rent which the tenants were obliged to pay steadily mounted. Under the Ptolemies papyri show that the Egyptian tenant paid rent of one-fifth of his produce; by the time of the Emperor Tiberius the rent had been raised to one-third; while by the fourth century it had reached one-half.[4] In addition to his rent the tenant was compelled to pay taxes, amounting to one-fifth of his product so he was left with less than one-third of his product for his own livelihood. Thus, although the symptoms of decline were not as marked

[1] Herodian, ii, 4, 12(6).

[2] Seeck, *op. cit.*, p. 492.

[3] *Ibid.*, p. 494.

[4] *Ibid.*, p. 492.

in Egypt as elsewhere, it is doubtful whether the Egyptian tenants were in a better condition than the coloni of the rest of the Empire.

The depopulation of the Empire was already causing serious misgivings in the first century, but the tremendous losses in population from the plague of 166 A. D. left enormous stretches of land without a cultivator. To offset the losses in population Marcus Aurelius imported thousands of barbarian captives as cultivators of the deserted lands. Previous writers on the barbarian settlements had attempted to relate the settlements of Marcus to the transplantation of the Scyrae as coloni in the fifth century.[1] But Seeck presented a new method of determining the condition of the settled barbarians. Among the Germans themselves, he said, the agricultural work was done by slave captives who were known as "lites." The "lite" was more of a serf than a slave as he cultivated the soil with very little direct supervision of his master. However, he was not allowed to leave the tribal land and paid a fixed rent in grain, cattle, and wool. When the Romans transplanted their German *dedititii* within the Empire, Seeck maintained that they became the "lites" of the Romans and held the same position on the lands of the Roman Empire that their own captives had held in their native homes. The barbarians whom Marcus settled in Gaul were known as *laeti,* which Seeck held was the Latinized term for "lites." However, the more common term for the barbarian cultivators was *inquilini.* These *inquilini* were closely associated with the coloni on the great estates. Both occupied a dependent position but the *inquilini* like the German "lites" were tied forever to the soil while the coloni were still free to leave if they wished.[2]

The coloni were brought into the same condition as the

[1] *Cf. supra,* pp. 35, 48, 57-58, 76.

[2] Seeck, *op. cit.,* pp. 495-496.

inquilini by the tax legislation of Diocletian. When Diocletian devised tax units called *capita* or *juga*, coloni were assimilated with the *inquilini* and slaves in forming a *caput*. The *decuriones* were made responsible for the taxes and if the tax collection fell short of the assessed amount they were obliged to pay the tax from their own resources. The heavier taxes of the tetrarchy caused many of the coloni to desert their holdings, and, to prevent the *decuriones* from being ruined by their responsibility for the taxes of the coloni, the coloni were bound to the soil in the same way as the barbarian *inquilini*.[1] But the underlying cause of the whole development of the colonate, from the decline of slave culture and the depression of the status of the tenantry to the settlement of barbarian *inquilini* and the final adscription of the coloni to the glebe, was the steady decline in population of the Empire.[2]

Seeck did not differ greatly from his predecessors in his account of the gradual depression of the free tenant in Italy and the provinces and of the final legal attachment of the coloni to the soil in the interests of taxation. But his introduction of the barbarian "inquilinate" as the model of the colonate was a return to the theory of Zumpt and Huschke; and the arguments with which he supported his assumptions were of considerably more doubtful validity than the arguments previously advanced by the earlier exponents of the theory of barbarian settlements. His whole theory rests on the hypothesis that the Latin word *laetus* was derived from the German "lite," or "lide." Such a derivation of *laetus* had originally been suggested by Gothofredus in the seventeenth century[3] but it had been rejected as untenable by later expositors of Roman and barbarian

[1] *Ibid.*, pp. 497-498.

[2] *Ibid.*, pp. 509-510, *et passim.*

[3] Commentary on *Cod. Theod.*, vii, 15, 1.

law.[1] The *laeti* were not serfs like the German "lites," but were free landholders who received lands along the Rhine frontier in return for military service. The second mistake which Seeck made in regard to the *laeti* was in confounding them with the barbarian *dedititii*. The *dedititii* were captives and if they were not settled in the Empire as coloni at least they held a position of considerable dependence. The *laeti*, on the other hand, were *foederati*[2] who held land along the frontier in a condition precisely similar to that of the veterans on the *fundi limitrophi*.[3] Thus the *laeti* were related neither to the German "lites" nor to the serf-coloni.

But the more common name by which the settled barbarian was known was *inquilinus*, according to Seeck. This use of the word *inquilinus* Seeck derived from the famous passage from Marcian[4] in which it was said that *inquilini* could not be bequeathed without the estate to which they were attached.[5] Since the decision of Marcian rested on a rescript of Marcus Aurelius, and the barbarians which that emperor transplanted were the only part of the agricultural population which was then attached to the soil, the *inquilini* must have been the barbarian serf-tenants, Seeck argued.

Just in what way the *inquilini* differed from the coloni has always puzzled commentators on the Roman Codes. Originally *inquilinus* meant the tenant of a city dwelling just as *colonus* referred to the tenant of a farm. But in the Codes the word *inquilinus* like *colonus* was used to designate an

[1] *Cf.* Giraud, *Hist. du droit français*, i, pp. 185-187; Guérard, *Polyptyque d' Irminon*, i, p. 275; Serrigny, *Droit public romain*, i, pp. 362-365.

[2] Giraud, *op. cit.*, p. 189; Serrigny, *op. cit.*, p. 360.

[3] Giraud, *op. cit.*, p. 196; Léotard, *Essai sur la condition des barbares*, pp. 118-119.

[4] *Dig.*, xxx, 1, 112, *pr.* *Cf. supra*, p. 188.

[5] Seeck, *op. cit.*, p. 496. *Cf.* Seeck, "*Geschichte des Untergangs der antiken Welt*," i, pp. 585-590.

agricultural serf-tenant. The two words were apparently used interchangeably and a constitution of Arcadius and Honorius of 400 A. D. said that although there was a difference of name between the *inquilini* and the coloni there was practically (*paene*) no difference between their condition.[1] Whether the *inquilini* were barbarian serf-tenants, as Seeck contended, or not, it is impossible to decide because of the absolute lack of evidence the one way or the other. But of one thing we may be fairly sure, and that is that there was no more difference between the *inquilini* and the coloni at the time of the Digest than at the time of the Codes. If the decision of Marcian indicated that the *inquilini* had become so closely associated with an estate that they were bequeathed with it at the death of the owner, a contemporaneous decision of Paulus cited by Schulten [2] testified that the coloni were in a similar condition for they could be included in the inventory of an estate; while a decision of Ulpian in the reign of Alexander Severus in regard to the registration of tenants in the census, treated the *inquilini* and coloni in a precisely similar manner.[3] So, whatever type of tenant the *inquilinus* did represent, it is certain that the "inquilinate" did not, as Seeck supposed, serve as the model after which the colonate was formed.

Seeck's treatment of the *laeti* and the *inquilini* was the weakest part of his theory. But even though he himself regarded the "inquilinate" as an essential part of his doctrine, much remained in his explanation of the origin of the colonate that was suggestive and enlightening. In his description of the gradual depression of the free tenantry in

[1] *Cod. Just.*, xi, 48, 13. "... inter inquilinos colonosve, quorum quantum ad originem pertinet vindicandam indiscreta eademque paene videtur esse condicio, licet sit discrimen in nomine."

[2] *Cf. supra*, p. 188.

[3] *Dig.*, L, 15, 4, 8. "Si quis inquilinum vel colonum non fuerit professus, vinculis censualibus tenetur."

Italy and the provinces, he showed more clearly than any of his predecessors that the peasantry were in the grip of the same forces which were bringing about the decay and destruction of the ancient world. The key-factor in the decline of ancient civilization, according to Seeck, was race suicide. The population shrank steadily century after century and the only way to keep the lands in cultivation was to bring the agricultural classes more and more under the control of the landlords. In Italy the coloni became a dependent class of debtor tenants; in Africa they became a perpetual hereditary tenantry subject to increasing exactions on the part of their overlords; in Egypt the coloni retained a progressively smaller share of their produce as time went on, until the fourth century they had barely enough to maintain a livelihood. Every Roman right and privilege gave way to the desperate energy of a decaying empire to make up for its decreasing man-power by forcing the survivors to perform more and more work in a condition of increasing servitude.

Like Seeck, Vinogradoff, the next writer to take up the problem of the colonate,[1] believed that the origin of the colonate was intimately connected with the economic decline of the Roman Empire; but instead of being the result of an arbitrary depression of status of the free tenant, Vinogradoff held that the colonate was primarily a meliorative institution devised for the purpose of maintaining and improving agriculture, in a period when productive agriculture was carried on with increasing difficulty.[2] Such certainly was the case in the transformation of the slave from a member of a chain gang to the condition of a slave tenant with a home and a plot of land of his own. This change was not made in the interests of humanity but because it had become necessary to give the slave a direct personal interest in the

[1] *Growth of the Manor* (London, 1905), pp. 67-83, 107-113.

[2] *Ibid.*, pp. 76, 79.

work of cultivation, if the cultivation of the land was to be maintained on a profitable basis; and encouragement succeeded where force had failed. Also, in case of the large landholders, the emphyteutic legislation of the late Empire offered important inducements in the way of remission of taxes, hereditary tenures, and low rent in order to bring deserted land into cultivation. It is not likely, said Vinogradoff, at a time when a policy of encouragement was relied on in the case of slaves and the great landlords, that the coloni alone should have been held to their work by force.[1]

The "emphyteutic aspect" of the colonate is plainly visible in the African inscriptions. The rent which the coloni were required to pay was only one-third of their product, which was very moderate especially in view of the fact that the landlord had to pay one-fifth of the total product to the government in taxes, thus receiving a net rent of less than one-seventh for his lands.[2] In addition, the coloni were merely held to six days' services a year which is insignificant compared to the two or three days a week required of the medieval serf. Further, the cultivation of waste lands and the planting of new crops were encouraged by bounties of considerable value, such as remission of rent for a period of years and possessory and hereditary rights on their holdings. In fact the whole imperial policy seemed to be in the direction of developing and maintaining a sturdy free peasantry on the estates of the crown. Of course occasionally the

[1] *Ibid.*, p. 77.

[2] *Ibid.*, p. 80. According to Vinogradoff the land tax was wholly subtracted from the landlord's share of the product, while according to Seeck (*op. cit.*, p. 492), the tax was taken altogether from the tenant's share. As we have no information on this subject either alternative may be correct, or neither; for there is nothing to preclude the possibility that the imperial tax was deducted from both the landlord's and the tenant's share, which would give the landlord a net return of approximately one-fourth of the product (4/15) while the tenant would retain a little more than one-half (8/15).

conductores and *procuratores* were guilty of encroachments on the rights of the imperial coloni, but the latter were not slow to raise strenuous protests and their rights were upheld by imperial rescripts as the inscriptions of Souk-el Khmis, Gazr-Mezuâr, and Aïn Zaga bear witness.[1]

But the principal argument in favor of an emphyteutic theory of the colonate lay in the later history of the colonate itself, Vinogradoff contended. There were numerous decrees during the fourth and fifth centuries enforcing the adscription to the glebe, but in the fifth century the empire completely disintegrated in the West. Yet the colonate did not disappear but continued apparently in unabated vigor until the Middle Ages. This survival of the colonate through these centuries of disorganization could only have been posible if the position of the colonus was a relatively attractive one. "Low rents, economic self-government in the management of their farms and efficient protection and help in case of need, must have been the attractions which had more to do with their holding out on the land than threats of fines and imprisonment."[2]

It is unfortunate that Vinogradoff did not develop a complete theory of the colonate, for his clear vision led him into the heart of the problem. The registration of the coloni in the tax rolls of the census was, as he said, merely the public side of the process of the attachment of the coloni to the soil.[3] At root the colonate was vitally connected with the problem of maintaining agriculture in the Empire. Garsonnet had first called attention to the close relation which existed between the emphyteutic and the colonate legislation of the late Empire.[4] As Vinogradoff said, this aspect of

[1] *Ibid.*, pp. 80-82.

[2] *Ibid.*, p. 79.

[3] *Ibid.*, p. 76.

[4] *Cf. supra*, pp. 132-133.

the problem had been entirely too much neglected. Just as capitalists were invited to invest their capital under exceedingly attractive conditions in the reclamation of uncultivated lands, so the coloni were kept on the soil by inducements of equal relative value.

There is no doubt that the colonate had this "meliorative" or "emphyteutic" aspect, as Vinogradoff maintained; yet it had its compulsory side also, and this was probably even more important. Emphyteusis was not the only means employed by the government to bring waste lands under cultivation; ἐπιβολή, the *compulsory* addition of deserted land to land under cultivation, was even more typical of the spirit of the administration. As long as proprietors could be induced to undertake the cultivation of waste land the government was satisfied with emphyteusis. But when hereditary leases, low rents, and remissions of taxes proved insufficient, the more drastic principle of ἐπιβολή was applied and proprietors were forced to cultivate deserted lands. Likewise, in relation to the development of the colonate, as long as the emphyteutic features illustrated by the African regulations proved sufficient to keep the coloni on their holdings, they were regarded as satisfactory by the administration. But when the coloni could no longer be retained on the soil by inducements and favorable conditions, then force had to be applied and the coloni bound to the soil by imperial edict.

It is true, as Vinogradoff said, that the colonate did not disappear, with the collapse of the Empire of the West. Yet this does not indicate, as he implied, that force was no longer applied to keep the coloni on the soil. The fall of Rome was succeeded by political anarchy in western Europe but not by complete economic disorganization. The economic and political history of the fifth century was largely concerned with the growth of patronage. As the central government gradually lost control of its constituent parts the local ad-

ministration passed into the hands of great proprietors or military potentates. So far as the coloni were concerned the patron took the place of the imperial government and if his position was changed at all it was probably for the worse,[1] just as was the experience of the coloni on the *saltus Burunitanus* under the conductor Allius Maximus before the intervention of Commodus. When the Western Empire finally came to an end the power of the patrons over their coloni was complete and the colonate gradually sunk into medieval serfdom. The meliorative features of the colonate may have been retained in many districts of the West, particularly in the domains of the monasteries where agriculture was most seriously practiced; but the dominating characteristic of the serf-colonate was the compulsory attachment of the cultivator to the soil.[2]

[1] *Cf.* Seeck, *op. cit.*, p. 509. De Zulueta, *De Patrociniis Vicorum*, pp. 18-40.

[2] In 1894, in an article in the *Archaeologisch-Epigraphische Mittheilungen* (xvii, 1894, pp. 125-134), "Über den römischen Colonat und seinen Zusammenhang mit dem Militärdienste," Hartmann argued that just as the free Italian peasant during the Republic had been forced to give place to the slave because of the liability of the former to military service, so in the late Empire because of the difficulty of obtaining recruits and the unavailability of slaves for military service the reverse process took place. It was as much an obligation of the proprietors to furnish soldiers for the army (*Cf. Cod. Theod.*, vii, 13, 2) as the capitation tax for the treasury; and possibly the former was as important a cause of the legal attachment of the coloni to the soil as the latter. (Hartmann, *op. cit.*, pp. 132-134. *Cf.* Mommsen, *Hermes*, xxiv (1889), p. 242. "Das ganze Institut des Colonats beruht darauf, dass der Leibeigene als freier Mann behandelt wird, um ihn zum Eintritt in das Heer fähig zu halten.")

Hartmann's suggestion was accepted by Bolkestein (*De Colonatu Romano ejusque Origine*, Amsterdam, 1906, pp. 159-160) as one of the causes leading up to the adscription of the coloni. But, in the main, Bolkestein followed Seeck in tracing the origin of the colonate to the gradual depression of the tenantry on the imperial *saltus*, because of the increasing scarcity of agricultural labor, and their final legal adscription in the interests of the treasury. (*Ibid.*, pp. 120-175.)

CHAPTER VII

The Influence of the East

The African inscriptions had had a great influence in molding theories of the colonate since 1880. Before they were discovered the gap between the colonus of Columella and the Digest and the colonus of the Codes seemed so great that most writers felt it necessary to relate the coloni to another source, such as barbarian settlements, earlier servile tenures, or conditionally emancipated slaves. The unsatisfactory character of all these explanations had given rise to the theory of administrative pressure, but exponents of that school had difficulty in explaining the enormous change in condition from the short-term tenant to the serf-colonus and in discovering a source which would be adequate to serve as the basis of the colonate. Heisterbergk, three years before the inscription of Souk-el-Khmis was discovered, advanced the theory that the great provincial *latifundia* were the home of the colonate, and the African inscriptions apparently substantiated his contention, at least so far as Africa was concerned. The inscriptions presented a picture of a numerous free tenantry cultivating the land under permanent and hereditary conditions. They were not serf-coloni, for they were not legally bound to the soil, yet they represented a class of cultivators from which it seemed that the coloni of the Codes might far more easily be derived than from barbarian settlers, slaves, or the short-term tenants of the Digest.

However, the African inscriptions related only to conditions in Africa. Investigators soon commenced to search for evidence of similar conditions in other provinces. A

few years after the inscription of Souk-el-Khmis was found Ramsay discovered a number of early third-century inscriptions in southeastern Phrygia which came to be known as the Ormelian inscriptions. Although these inscriptions were far less enlightening than any of the African inscriptions, the mention of *procuratores* (ἐπίτροποι), ***conductores*** (μισθωταί), ***actores*** (πραγματευταί), and a ***magister vici*** (προάγων) led both Ramsay [1] and Pelham [2] to maintain that conditions on the imperial domains in Asia Minor were substantially similar to those in Africa. Likewise in 1897 a study of some recently discovered Egyptian papyri brought Paul Meyer to the opinion that conditions on the African domains were closely paralleled by those on the catoecic land (γῆ κατοικική) in Egypt.[3] The catoecic land was state land granted to Greek or Roman soldiers and their descendants for which they paid a moderate rent and which they frequently sublet to the native peasantry. While the position of the tenants on state land (δημόσιοι γεωργοί) was rather favorable as late as the third century, the catoecic peasants (γεωργοὶ κλήρου κατοικικοῦ) had fallen into a condition of decided dependence by the second century. The lower status of the latter Meyer believed was due to the fact that they were only sub-tenants while the state peasants were direct tenants of the crown. Like the African coloni of the same period the catoecic tenants in Egypt had the essential characteristics of the serf-coloni, Meyer held. In fact not only were the serf-tenants similar to the African coloni but their landlords, the κάτοικοι, corresponded very closely to the *conductores* of the African domains.[4] Four second-century papyri indicated in general

[1] *The Historical Geography of Asia Minor*, London, 1890, pp. 173-176; *The Cities and Bishoprics of Phrygia*, Oxford, 1895, pp. 280-284.

[2] *Cf. supra*, p. 165.

[3] *Philologus*, lvi (1897), pp. 201-205.

[4] *Ibid.*, p. 201.

the terms of the leases on catoecic land.[1] In accordance with these leases the catoecic peasants paid share rent, furnished their own seed, and agreed to perform all the necessary work to keep their tenancies in good condition. The imperial *vectigal* (τὰ δημόσια) was paid by the κάτοικος himself and not the γεωργός, just as in Africa it was the *conductor* who paid the *vectigal*, and in the late Empire it was the proprietor of the servile colonus. The principal difference between the γεωργοὶ on catoecic land and the coloni of the fourth century lay in the fact that the γεωργοὶ had no claim to the land after the expiration of their leases and must leave unless the land was re-leased.[2]

The analogy which Meyer drew between conditions on catoecic land in Egypt and the African domains was not very favorably received by other Egyptologists. Rostovtzeff contended that there was nothing at all in common between the κάτοικοι and the African *conductores*.[3] The κάτοικοι paid share rent to the government like the coloni, rather than a money rent like the *conductores*. The coloni in Africa were obligated to perform certain *operae* on the demesne, while the catoecic peasants had no such obligation. Although the sub-tenants of the κάτοικοι probably paid a higher rent than the tenants on the state land, legally their condition was the same as that of the δημόσιοι γεωργοί, that of free tenants holding leases.[4] Mayence likewise added his criticism to that of Rostovtzeff. Although the papyri cited by Meyer showed that the catoecic peasants paid rent in shares like the African coloni and the coloni of the Codes, yet they also indicated that they were short-term tenants and hence neither bound

[1] *B. G. U.*, 39 (185-186 A. D.); 227 (150-151 A. D.); *C. P. R.*, 31 (154 A. D.); 240 (126 A. D.)

[2] *Ibid.*, p. 204.

[3] *Philologus*, lvii (1898), pp. 572-573, note 13.

[4] *Ibid., loc. cit.* and p. 570.

to the soil like the servile coloni nor perpetual tenants like the coloni in Africa. Lacking these essential characteristics Mayence maintained that the conditions on catoecic land cannot be said to lead to the colonate of the Codes.[1]

Mitteis, like Rostovtzeff, had criticised Meyer for regarding the κάτοικος as the Egyptian counterpart of the African *conductor*,[2] but in a later work he returned to the theory that Egypt was the "classic land of the colonate" where the oldest traces of dependence of the peasantry in the Roman Empire were to be found.[3] While the Egyptian papyri did not definitely state that the peasants were in a semi-servile condition, yet they at least indicated such a conclusion, Mitteis maintained. In the first place there was the πενθημερία, the five days' services on the canals and irrigation ditches, which were required of the peasants of the Fayum district. Then a third-century papyrus in the British Museum referred to the removal of twelve peasants from one village to another.[4] If the government was in the habit of transferring peasants from one village to another Mitteis contended that it certainly must have the power to compel them to stay in their native villages if it so desired. Even in the first century there had been a tendency on the part of the provincial administration to force men to lease public lands. "For I am well aware" said the prefect Tiberius Julius Alexander in his edict of 68 A. D., "that your remonstrance is most reasonable that men should not be forced against their will to take up tax-farming contracts or *other*

[1] *Le musée belge*, vi (1902), pp. 91-93.

[2] *Hermes*, xxxii (1897), p. 657, note 2.

[3] Mitteis, *Aus den griechischen Papyrusurkunden* (Leipzig, 1900), pp. 31-32, "Dagegen beginnt Aegypten ... sich nachgerade als ein classischer Boden des Colonats herauszustellen. Wir finden hier jetzt die ältesten sicheren Spuren der bäuerlichen Unfreiheit im römischen Reich."

[4] *P. Lond.*, ii, 322 (214-215 A. D.).

property leases (ἢ ἄλλας μισθώσεις ὑσιακάς) contrary to the common custom of the provinces."[1] Finally, this same policy of government control of the peasantry can be seen in a papyrus of the second century B. C.[2] in which reference was made to the compulsory sowing of the royal lands required of certain peasants.[3]

In the meantime a new inscription had been discovered in Asia Minor which was published by Haussoullier in 1901 in the *Revue de Philologie*.[4] The inscription was of the year 256 B. C. and concerned the purchase of the village of Pannos by the Seleucid queen, Laodice. The queen not only obtained control over all the peasantry (λαοί) then living in the village and their rents, but "equally," the inscription said, "in the case of the peasants of the village who have gone into other localities, if they are not obligated to the royal treasury, those also she will have the right to attach to a city state if she wishes."[5] This inscription, notwithstanding its early date, had an important influence in forming a new theory of the colonate which was presented by Rostovtzeff in 1901.[6]

In recent years, said Rostovtzeff, two particular elements

[1] *Rheinische Museum für Philologie*, ii (1828), p. 147, lines 10-11. "Ἔγνων γὰρ πρὸ παντὸς εὐλογωτάτην οὖσαν τὴν ἐντεῦξιν ὑμῶν ὑπὲρ τοῦ μὴ ἀκοντας ἀνθρώπους εἰς τελωνείας ἢ ἄλλας μισθώσεις οὐσιακὰς παρὰ τὸ κοινὸν ἔθος τῶν ἐπαρχιῶν πρὸς βίαν ἀγεσθαι." But as the Edict was addressed to Alexandrian proprietors the forced leases in question concerned them rather than the peasants, as Mitteis supposed. *Cf. supra*, pp. 35-36.

[2] *P. Par.*, 63.

[3] Mitteis, *op. cit.*, p. 32.

[4] *Revue de Philologie*, xxv (1901), pp. 9-12.

[5] *Ibid.*, p. 9, lines 7-10. "ὁμοίως δὲ καὶ εἴ τινες ἐκ τῆς κώμης ταύτης ὄντες λαοὶ μετελήλιθασιν εἰς ἄλλους τόπους ἐφ' ὧι οὐθὲν ἀποτελεῖν εἰς τὸ βασιλικόν, καὶ κυρία ἔσται προσφερομένη πρὸς πόλιν ἣν ἂν βούληται."

[6] "Der Ursprung des Kolonats," *Beiträge zur alten Geschichte*, i (1901), pp. 295-299.

had been stressed in explaining the historical development of the colonate. The first was the attachment of the coloni to the soil on the imperial domains as a matter of custom and habit before it became legal adscription. The second was the close relation of this gradual attachment to the soil to the extra-municipal character of the estates of the crown; for the colonate had developed almost exclusively on the tax-exempt territories of the *saltus*.[1] Most writers had regarded the adscription to the glebe and the extra-municipal character of the domains as pure Roman products which developed first in Italy and Africa and then spread to the East. But, Rostovtzeff contended, it is better to look for these roots of the colonate in the cultured Hellenistic East rather than in the West; and since an extra-municipal domanial policy could hardly have developed in city-less Egypt, the real home of the colonate may well have been the kingdom of the Seleucids in Asia Minor.[2]

The Laodice inscription referred to above showed that the essential features of the imperial policy, as seen in the African domains, existed in Asia Minor in the third century B. C. on the domains of Seleucids. Like the African domains the lands purchased by Laodice were under no municipal control, the peasants were bound to the soil, and were tenants of the crown rather than small proprietors. Apparently then, Rostovtzeff argued, we have evidence of a continuous development of the colonate on royal domains from the very earliest times. The domains of the monarchs of the Assyrians, Babylonians, and their predecessors were inherited by the Persian kings; the Persian domains fell into the hands of the Hellenistic rulers; and finally with the Roman conquest the domains became first *ager publicus* and

[1] *Ibid.*, p. 295. "Der Kolonat hat sich fast ausschliesslich auf den eximierten Territorien der *saltus* entwickelt."

[2] *Ibid.*, p. 296.

later the estates of the emperor. But the peasants who cultivated these lands probably changed little with the change of overlords. As coloni bound to the soil they appear in the Laodice inscription, our earliest source of information, and coloni bound to the soil they remained.[1] The Romans not only retained the domanial organization of the Hellenistic monarchs and their predecessors in the East, but they used it as the model for the organization of their imperial domains in the West. Hence the emperor's provincial estates, instead of being formed after the Italian municipal system, were organized on the basis of the extra-municipal domains of the East. So far as the cultivators were concerned it was not at first the intention of the emperors to import the Eastern colonate into the West, for they wished to revive a small farmer class if possible. But in time the colonate became necessary and when that time came the East furnished the model after which it was organized. "Hence the rebirth of the never dead colonate bound to the soil."[2]

In the same year Meyer returned to the championship of Egypt as the home of the colonate.[3] The Laodice inscription, he said, presented a picture of a dependent peasantry in Asia Minor, but the λαοὶ were not completely bound to the soil for many of them left the village of Pannos to avoid paying taxes. Yet, since the inscription said that the queen had the right to re-attach them to the village, it is evident that legally they were still regarded as belonging to the district in which they were born. This same principle of attachment to the place of one's birth, or ἰδία as it was called, was present in Egypt, as numerous papyri testify. At first

[1] *Ibid.*, pp. 297-298.

[2] *Ibid.*, p. 299. "So geschah die Wiedergeburt das nie gestorben, an die Scholle gebundenen Kolonats."

[3] "Zum Ursprung des Kolonats," *Beiträge zur alten Geschichte*, i (1901), pp. 424-426.

ἰδία, stated that it was beyond doubt one of the roots of the taxes and services. But as time went on the peasant came to be tied more and more closely to his place of origin until finally he was not allowed to leave under any pretext.[1] The final *adscriptio glebae* was really nothing more than a further development of the ancient principle of ἰδία. In Asia Minor, as Rostovtzeff argued, the colonate may first have developed on the great extra-municipal domains of the crown. But lack of such an organization in Egypt did not prevent, as Rostovtzeff supposed, a native development of the colonate in Egypt.[2]

The principle of ἰδία, to which Meyer had called attention, was indeed an important one. A few years later De Zulueta, who had collected a number of new texts bearing on ἰδία, stated that it was beyond doubt one of the roots of the colonate.[3] And Rostovtzeff himself was finally so convinced of its importance that in the restatement of his theory, which appeared in 1910 in his *Studien zur Geschichte des römischen Kolonates,* his attention was largely shifted from Asia Minor to Egypt

The historical development of the colonate was a highly complicated one, said Rostovtzeff, and cannot be understood simply from the material available from Italian and African sources. It developed differently in each province of the Empire, and the local provincial differences were so strong that even the harmonizing policy of the imperial administration was unable to introduce a uniform development in different parts of the Empire. In the Hellenistic lands of the East a dependent state peasantry was to be found which

[1] *Cod. Theod.*, xi, 24, 6, 3 (415 A. D.). "Hi sane, qui vicis quibus adscripti sunt derelictis .... ad alios seu vicos seu dominos transierunt, ad sedem desolati ruris constrictis detentatoribus redire cogantur."

[2] Meyer, *op. cit.*, p. 425.

[3] De Zulueta, *De Patrociniis Vicorum* (Oxford, 1909), pp. 42-43.

apparently went back to the earliest historical times; in the West, on the other hand, a free tenant class was equally discernible. Most writers had regarded the historical evolution of the Western tenantry as the dominant factor in the development of the colonate as a universal institution of the late Empire, while the influence of the East had been overlooked. But so far as one part of the Roman world affected other parts, it was the influence of the East which was paramount. The experience of ages of civilization was to be learned there and as the Roman emperors found it increasingly difficult to maintain prosperity in a decaying Empire, the economic policy of their Eastern predecessors was imitated again and again. Especially important was the influence of the régime of the Ptolemies in Egypt. They had found Egypt in a deplorable condition after the misrule of its Assyrian and Persian overlords, but through their careful policy of exploitation of the natural resources of the country they had restored Egypt to her ancient prosperity and made it the garden spot of the world. The methods employed by these Hellenistic monarchs with so much success in Egypt beyond doubt had a strong influence in forming the Roman imperial policy when the resources of the Empire began to decline and great stretches of deserted land commenced to appear.[1]

In Egypt in the Ptolmaic period all land belonged to the king, but it was divided into two main categories, royal land (*γῆ βασιλική*), which was directly administered by royal officials, and land under grant (*γῆ ἐν ἀφέσει*). The chief kinds of land under grant were the old temple land (*γῆ ἱερά*), which was little disturbed from the time of the Pharoahs, and two new categories, land granted to Greek veterans

[1] Rostowzew, *Studien*, pp. v-vii; art. "Kolonat" in Conrad's *Handw. d. Staatsw.*, v, pp. 913, 919; *Univ. of Wis. Stud. in Soc. Sci.*, vi (1922), pp. 3-4.

known as cleruchic land (γῆ κληρουχική), and private leaseholds (γῆ ἰδιόκτητος or κτήματα). Much of the cleruchic and private land was dry land (γῆ χέρσος) and was granted on terms which were very similar to the later Roman emphyteusis. The grant of land included the duty of cultivation, the taxes were lower there than elsewhere, and while the granted land was originally held in precarious tenure it tended to become hereditary like the Roman emphyteutic land.[1] By emphyteutic grants of land the Ptolemies were able to keep much of the less valuable land in cultivation. But where encouragements failed coercion could be applied. Peasants could be compelled to cultivate the deserted fields, or the *gleba inutilis* could be forcibly added to the possessions of an owner of fertile land just as in the case of the ἐπιβολή practice of the late Roman Empire.[2]

Most of the fertile Egyptian land was included in the royal land which was cultivated by small tenants known as royal peasants (βασιλικοὶ γεωργοί or λαοί) under the close supervision of a hierarchy of state officials. They held their land according to the terms of a precarious lease which apparently could be revoked or changed at the pleasure or convenience of the administration.[3] The peasants had no choice but to accept the terms which the government saw fit to grant them. In case the conditions of their tenure became unbearably oppressive the peasants occasionally organized a strike (ἀναχώρησις) and withdrew in a body to a temple where they were under the protection of the gods and could not be molested.[4] They were excluded from the courts, all their disputes being settled by the royal officials

[1] Rostowzew, *Studien*, pp. 7-11, 15-17, 30-31, 40-41.

[2] *Ibid.*, pp. 53-58. *Cf.*, De Zulueta, *op. cit.*, p. 70.

[3] Rostowzew, *op. cit.*, p. 51.

[4] Rostowzew, *loc. cit.*, and p. 74; *Univ. of Wis. Stud. in Soc. Sci.*, vi (1922), pp. 75-76, 80-81.

set over them. In fact their whole life was regulated to the minutest detail by the official bureaucracy charged with the administration of the crown land.[1]

Were the royal peasants of the Ptolemaic period serfs? Rostovtzeff doubted it but believed that they retained in their dependent condition many vestiges of an earlier pre-Ptolemaic serfdom. The forced precarious lease which they held, the complete control which the royal officials exercised over them, the heavy public services on the canals and in the mines and galleys which the government could exact, and above all the principle of ἴδια by which the peasant could always be recalled to his native village for his obligations to the government—all these pointed to an earlier servile status, Rostovtzeff maintained.[2] As for the peasants on the granted land, who were the sub-tenants of the priests, the cleruchs, and the private lessees, their condition differed little from that of the crown peasants. Probably their rents were higher and their economic condition somewhat lower than that of the βασιλικοὶ γεωργοί. But the latter were under much closer supervision by the state officials and the principle of ἴδια was more strictly enforced in regard to them. They were a kind of aristocracy of agricultural labor, but at the same time they were the most dependent class of the Egyptian peasantry.[3]

The Roman conquest did not introduce any revolutionary changes in the agricultural conditions of Egypt. For the most part the Roman administrators built on foundations already laid by their Hellenistic predecessors. Like the Hellenistic, the Roman system of exploitation was partly a

[1] Rostowzew, *Studien*, pp. 68-70.

[2] *Ibid.*, pp. 75-76.

[3] *Ibid.*, p. 83. "Die Königsbauern . . . scheiden damit aus der übrigen Bevölkerung Ägyptens aus, indem sie als nähere Untertanen behandelt werden, eine Art Aristokratie und zugleich etwas den Leibeigenen Ähnliches unter den übrigen ägyptischen λαοί."

[illegible]

[illegible]

[illegible]

altered at the pleasure of the government.[1] Although they were not hereditary tenants they had considerable rights over their tenancies as long as their leases remained in force. They could sublet parts of their land to others, they could divide the parcels up with other members of the community, and they could even go so far as to use the land which they cultivated as a pledge for their debts.[2] On their part they agreed to irrigate the land and keep it in cultivation. The government furnished them with seed but they obligated themselves to pay it back at harvest, together with their taxes and rents in kind; although in case the Nile failed to overflow they were granted a reduction in their rent.[3] Other obligations, such as work on the canals and dams, the forced cultivation of deserted land, and the duty to remain in their ἰδία were not included in the contracts of the Roman period which have come down to us and apparently were enforced by other means. The most important of these obligations was the practice of ἰδία. Ἰδία, however, did not imply that the peasants were bound to the soil, for papyri give examples of peasants leasing the land of neighboring villages and even of making their homes away from the village of their nativity.[4] The principle of ἰδία meant that the peasant was regarded as belonging to the village on whose tax rolls he was registered. The whole community of peasants registered in the tax rolls of any particular village was held responsible for the taxes of each constituent member. A peasant might be living in another village, but his taxes were paid to his native village, not to the village of his domicile.[5] But it is not likely, Rostovtzeff held, that

[1] *Ibid.*, pp. 160-161, 164.

[2] *Ibid.*, p. 161.

[3] *Ibid.*, pp. 165, 216.

[4] *Ibid.*, pp. 156, 212.

[5] *Ibid.*, pp. 157, 212. The tax registration of Joseph of Nazareth at Bethlehem (Luke ii, 3-4) is the most familiar example of this practice.

the peasants were free to move away from their native district on their own free initiative for the examples which have come down to us of state tenants living away from their native homes were probably peasants who were moved at the discretion of the government from districts where agricultural labor was plentiful to the districts where it was scarce.[1]

Besides the state tenants there was another class of peasantry who sublet the land of the large lessees on the less valuable land. These sub-tenants (ὑπομισθωταί) held very short-term leases but as time went on their condition became progressively worse as their heavy obligations and the poor quality of the land kept them continually in arrears.[2] Likewise the small private possessors (κτήτορες) who had formed a kind of middle agricultural class in the first century of the Roman rule, were sinking rapidly into a condition very similar to that of the state peasantry and the sub-tenants. The pressure of government liturgies, forced leases, and ἐπιβολή put them as thoroughly under the control of the government as if they were tenants of the state. Finally ἰδία affected them also and in time their condition became indistinguishable from that of the state peasantry.

How the serf-colonate of the late Roman Empire developed in Egypt, Rostovtzeff admitted was a problem which cannot be fully solved with our present inadequate state of information in regard to Egypt; yet he felt that the main lines of development were clear. The constant pressure of government liturgies and taxes led to desertion of the land. Valiant efforts were made by the government to reclaim the land by forced leases and ἐπιβολή, but the additional burdens

[1] *Ibid.*, p. 212.

[2] *Ibid.*, pp. 184-186, 191.

[3] *Ibid.*, p. 226.

merely made conditions harder for the remaining agricultural population and desertion continued and increased. The old principle of ἰδία was then applied more and more stringently to keep the peasant from leaving his native district and this finally resulted in absolute servile bondage.[1] "But it must be always kept in mind," said Rostovtzeff, "that the foundations of the late colonate were laid by the state and that the state-colonate had always existed in Egypt and in its essential features remained ever the same."[2]

The development of the colonate in other Hellenistic lands was in general similar to its development in Egypt and possibly was strongly affected by Egyptian influences. The first Hellenistic country with which Rome came in close contact was Sicily. When Rome conquered Sicily it found the fiscal policy of the island governed by the *lex Hieronica* of the Syracusan king Hiero II. This law, which perhaps formulated after the model of the Revenue Laws of Ptolemy Philadelphus,[3] regulated the payment of a grain tithe (δεκάτη) to the state from all the peasants in the island, whether they were tenants of the royal domains or of city territories. The tithes were collected not by royal officials but were leased to tax farmers, and Rostovtzeff held that the Roman system of tax farming, both in Sicily and other provinces, could be traced to the *lex Hieronica* as its origin, which in turn had been patterned after earlier Greek and Hellenistic models in the East.[4] As for the tribute-paying peasants themselves, they became *coloni populi Romani atque*

[1] *Ibid.*, pp. 225, 227.

[2] *Ibid.*, p. 228. "Er wird aber immer im Auge behalten müssen, dass die Grundlagen für den Kolonat der Spätzeit vom Staate gelegt wurden und dass der Staatskolonat in Ägypten immer da war und in seinen Grundzügen immer derselbe blieb."

[3] *Ibid.*, p. 233.

[4] *Ibid.*, pp. 235, 237.

aratores,[1] but aside from the change of masters, their condition remained much the same as it had been before. In fact the incorporation of Sicily as a province in the Roman state affected the Romans themselves more than it did the Sicilians for it introduced into the Roman administrative structure the leaven of Hellenism which was destined to modify it completely.[2]

We have no records of the agricultural legislation in Macedonia previous to the Roman conquest, but Rostovtzeff believed that here as in Sicily Rome merely took over the existing system as it had been developed, substituting her suzerainty for that of the Macedonian kings.[3] In regard to Asia Minor, fortunately the sources, although scanty, are sufficient to indicate in general what the agricultural conditions were both before and after the Roman conquest. In many respects the situation in Hellenistic Asia Minor was strikingly similar to that in Hellenistic Egypt, but it differed in one important point: in Egypt all land belonged to the king while in Asia Minor there was a strong contrast between the city territory and the royal domain.[4] The royal domain (*χώρα βασιλική*) was very large in extent, and it was the source of the major part of the revenue of the Seleucids.[5] The royal domain was cultivated by crown peasants (*λαοὶ βασιλικοί*) who paid taxes sometimes in money but more frequently in kind like the Sicilian tithes. The Laodice inscription of the third century B. C. showed that the peasants while not bound to the soil were held to their *ἴδια* like the crown peasants of Egypt.[6] On the city domains, the city

[1] Cic., *In Verr.*, ii, 3, 228.

[2] Rostowzew, *op. cit.*, pp. 230, 232.

[3] *Ibid.*, p. 230.

[4] *Ibid.*, p. 231.

[5] *Ibid.*, p. 247.

[6] *Ibid.*, p. 258. *Cf. supra*, pp. 206-208. Rostovtzeff had earlier stated that

peasants (πάροικοι) had probably originally been serfs like the Helots of Sparta or the Penestes of Thessaly.[1] Likewise the temple lands of Asia Minor previous to the Greek conquest had been cultivated by hierodules or temple serfs. But by the time of the Seleucids the peasantry on the city estates were practically in the same position as the crown peasants. Inscriptions show that the city peasants lived in small villages where they enjoyed a certain amount of self government and might even possess land in common.[2] Probably the same community organization existed on the royal domain, although of this we have no certain records. The emphyteutic lease was also commonly granted on city land and probably also on the crown estates just as in Egypt.[3]

After the Roman conquest most of the land of Asia Minor became first *ager publicus* and later imperial domains; but the economic and social condition of the peasantry was little affected by the change of masters. The picture presented by the Laodice inscription of the third century B. C. might very well fit the situation on imperial domains as described by inscriptions of the third century A. D.[4] The peasantry continued to live in little agricultural villages called "communities" (κοινά) which, as in earlier times, had a certain amount of self-government. If an estate was sold or given away the tenants cultivating the land were included just as in the Laodice inscription. They owed rents and taxes

the λαοὶ sind an die Scholle Gebundene" (*Beitr. z. alt. Gesch.* i (1901), p. 297) but in his *Studien* he had evidently accepted the criticism of Meyer that the condition of the λαοὶ was simply "die Gebundenheit an die ἰδία," (*Ibid.*, p. 424.)

[1] Rostowzew, *Studien*, p. 259.

[2] *Ibid.*, pp. 262-263.

[3] *Ibid.*, pp. 266-267.

[4] Conrad's *Handw. d. Staatsw.*, art. "Kolonat," vol. v, p. 916. *Studien*, pp. 300, 304.

which were collected by tax farmers as in Sicily, but whether these were payable in kind or in money we have no information. At the head of the administration of the imperial domains was a hierarchy of imperial officers who oppressed the peasantry with many burdensome services.[1] The peasantry sometimes complained, like the coloni of the *saltus Burunitanus*, and at other times they fled; and as in Egypt this was checked by the enforcement of ἰδία. However, there is no evidence of legal attachment to the soil, although departure from one's ancestral home must have been looked upon as something abnormal.[2]

In Hellenistic lands the condition of the agricultural population had been little disturbed by the Roman conquest. In Africa, however, Rostovtzeff believed that the Roman occupation created more of a break with previous conditions. Nothing definite is known about the state of the African peasantry under the Carthaginian rule but Rostovtzeff thought it not unlikely that the peasants were state tenants like the natives of regions conquered and colonized by the Greeks.[3] The addition of the fertile African province to the Roman dominions caused a considerable Italian emigration both of peasant colonists and capitalists to Africa.[4] Enormous *latifundia* developed which Rostovtzeff believed were first worked by slaves as in Italy. But slaves were difficult to obtain in competition with Italy and as slavery was not well adapted to wheat culture it soon disappeared and was succeeded by a small tenant system, composed partly

[1] *Studien*, pp. 302-304.

[2] *Ibid.*, p. 305.

[3] *Ibid.*, p. 314.

[4] In a recent article, "A Great Agricultural Emigration from Italy," *Jour. Rom. Studies*, 1918, pp. 34-52, Heitland criticises Rostovtzeff's assumptions and denies that Italy furnished any considerable number of colonists to Africa.

of Italian immigrants and partly of natives.[1] Thus at the time of the great confiscation of Nero a tenant class of considerable proportions was developing in Africa whose status was determined partly by pre-Roman agricultural traditions and partly by the customs which the Roman colonists and landlords had brought with them from Italy.[2] However, with the introduction of the great imperial laws, the *lex Manciana,* which Rostovtzeff regarded as the work of Vespasian,[3] and the *lex Hadriana,* another influence was brought to bear upon the peasantry which in time was to have a considerable effect on their development. This was the influence of Hellenism as it worked through the medium of the Roman imperial administration.[4] Schulten had already advanced the hypothesis that the Roman emperors had been strongly influenced by the policy of the Hellenistic kings of Egypt, Asia Minor, and Sicily in organizing their private domains. Both the emphyteutic features of the *lex Manciana* and the *lex Hadriana* and the share-rent system he held were of Greek rather than Italian origin.[5] Rostovtzeff, who was far better acquainted with the Hellenistic sources than Schulten, found many more analogies between the imperial regulations governing the African domains and the practices of the East. The aim of the policy of the more far-sighted emperors, he maintained, was to develop a prosperous class of state peasants like the Hellenistic γεωργοὶ βασιλικοί,[6] while the model for domanial regulations such as the *lex Manciana* and *lex Hadriana* was the Hellenistic revenue laws (νόμοι τελωνικοί). It would have been foolish,

[1] Rostowzew, *Studien,* pp. 318-319, 339.

[2] *Ibid.,* p. 340.

[3] *Ibid.,* pp. 323-329. *Cf. supra,* p. 178, n. 3.

[4] *Ibid.,* p. 353.

[5] Schulten, *Abhandl. d. Gött. Ges. d. Wiss., Philol.-Histor. Kl.* ii (1897), pp. 46-47.

[6] Rostowzew, *Studien,* pp. 339, 352.

said Rostovtzeff, for the emperors to cast aside the experience of centuries in order to create a new system of domanial administration. The general economic and social conditions were the same, and legislators and officials alike made the fullest use of Hellenistic practices, adapting them to the particular situation in the province.[1] The provisions in the African regulations for setting out grapes, olives, and figs were very similar to the Egyptian rules for planting garden land (καταφύτευσις).[2] The method of determining the share of the crop which was to go as rent was in most respects like that of the earlier Egyptian and Sicilian practices.[3] The share-rent system, the rigid administrative control exercised by the government officials, the minute details with which the economic life of the coloni was regulated, the application of general regulations to individual estates, the community life in the villages—all point to a development in the African domains similar to conditions in the Hellenistic lands of the East.[4] The beginnings of ἐπιβολή or *iunctio* were discernible in the *lex Hadriana,* which opened for occupation uncultivated lands "which were in those parts of the *saltus Blandianus* and *Udensis* which were joined (*iunctae*) to the *saltus Thusdritanus.*"[5] The rule of

[1] *Ibid.*, pp. 370, 380.

[2] *Ibid.*, pp. 350-351.

[3] *Ibid.*, pp. 365-368.

[4] *Ibid.*, pp. 369-370.

[5] Bruns, *Fontes*, 7th ed., no. 116, ii, 8-13, "Potestas fit *omnibus* e(tia)m eas partes occupandi quae in centuris elocatis saltus Blandiani et Udensis et in illis partibus sunt *quae ex saltu Lamiano et Dom(i)tiano iunctae Thusdritano sunt* nec a conductoribus exercentur." Schulten (*Hermes*, xxix (1894), p. 219) had been the first to advance the somewhat adventurous opinion that the *iunctio* of certain uncultivated fields of the *saltus Blandianus* and *Udensis* to the *saltus Thusdritanus* was an example of ἐπιβολή which preceded the legislation in the Codes by two centuries. The conclusion is not impossible but Rostovtzeff is hardly justified in calling the *iunctio* in question "ein sicheres Beispiel, und zwar das im Westen früheste, der späteren ἐπιβολή." (*Studien*, p. 348.)

ἰδία is also seen in the regulation that the colonus must dwell on the *saltus* in order to enjoy the full rights of his tenure, including the privilege of reclaiming waste land.[1] Finally the numerous strikes of the Egyptian peasants against the oppression of the officials had its counterpart in the revolt of the coloni of the *saltus Burunitanus* which had to be quelled by imperial troops.[2] In fact, concluded Rostovtzeff, the African inscriptions show that the coloni of the African *saltus* possessed all the essential characteristics of the state peasantry of Egypt and Asia Minor.[3]

As the colonate was the creation of the imperial law strongly affected by Hellenistic influences, Rostovtzeff held that the evolution of the peasant classes in Italy, where the Roman city law remained in force, was not as significant as the contemporaneous evolution in the provinces.[4] The condition of the coloni in the last century of the Republic and in the beginning of the Empire is not exactly known. They were regarded as short-term lessees by the agricultural writers and the jurists, but probably on the great estates they were more like the state peasants of the East where the conditions were dictated by the proprietor and accepted without question by the coloni. The fact that they were lumped together with slaves and freedmen by large landholders like Catiline and Domitius Ahenobarbus [5] indicates that the condition of all parts of the agricultural population

[1] *Ibid.*, pp. 370-371. This was true in the case of the *lex Manciana* which granted holdings in the *subcesiva* to those who dwelt "intra fundo Villae Magnae Variani." *Cf. supra*, p. 175. But the *lex Hadriana* did not limit the squatter rights to coloni of the estates but granted them "to all" (*omnibus*) as is seen in the passage just quoted.

[2] *Ibid.*, p. 374.

[3] *Ibid.*, p. 375.

[4] Rostowzew, art. "Kolonat," in Conrad's *Handw. d. Staatsw.*, vol. v, pp. 917-918.

[5] *Cf. supra*, p. 153.

was much the same, the slaves and freedmen holding servile tenures and the coloni being tied by the bonds of clientage to the person and the estate of the landlord. In the second and third centuries the few references at our disposal point to a development of the tenantry in the direction of the state peasantry of the provinces. Share-rent became more common, the tendency toward long leases became marked, while everywhere the coloni seemed to be sinking in debt and great stretches of land were absolutely deserted. Finally with the introduction of the land tax into Italy, in the third century, the same problems of administration of taxation confronted the emperors as obtained in the provinces.[1]

In the first and second centuries the object of the imperial agrarian policy had been to establish a prosperous class of imperial tenant farmers in the West after the model of the state peasantry of the East. As direct relations as possible between the emperor and his tenants were maintained while encroachments of the middlemen, the *conductores* and *procuratores,* were checked by regulations like the *lex Hadriana* which the coloni with good reason inscribed in bronze and on altars in honor of the emperor.[2] But the various means adopted to develop a sturdy agricultural class and to encourage the cultivation of the land were not sufficient to check the decline of the Roman Empire which assumed menacing proportions in the third century. The fundamental weakness of the Roman state lay in the fact that its political expansion had been greater than its economic and cultural development.[3] Italy drained herself of her own strength in sending out soldiers and colonists in the vain effort to Romanize the provinces. With Italy exhausted, the centrifugal force of the heterogeneous elements in the

[1] Rostowzew, *op. cit.*, pp. 917-918.

[2] *Ibid.*, p. 918; *Studien*, pp. 370, 380-381.

[3] *Studien*, p. 388.

Empire was enormous, and artificial factors such as walls, fortifications, armies, and huge corps of administrative officials had to serve as the sole cohesive forces. To maintain these a large revenue was needed and consequently in the late Empire every policy had to be subordinated to the supreme need of raising taxes; and as taxes were largely derived from the land it became vitally necessary to prevent further desertion of the soil and to increase as far as possible the amount of land under cultivation.[1] Since the policy of dealing directly with the peasantry had not succeeded in preventing the decline in production, attention was shifted to the wealthy city senators (*decuriones*) and the lessees of large tracts of imperial land (*conductores*) who now became the last "hope of a tottering empire."[2]

Just as Hellenistic practices were utilized in the development of a state peasantry in the West, so they were likewise found available in the treatment of the wealthy landholders. Various types of long, perpetual, and emphyteutic leases which had previously been common in Egypt took the place of the Italian five-year lease.[3] Ἐπιβολή, an Egyptian practice since Ptolemaic times, was applied by the Romans everywhere throughout the Empire.[4] The old Hellenistic custom of making property holders responsible with their total wealth for the taxes and liturgies of their districts was found to be the only practicable method of collecting the revenue and obtaining the prompt payment of government *corvées*.[5] As the need for revenue increased the middlemen became more and more necessary and powerful. They shifted their

[1] *Ibid.*, p. 389.

[2] *Ibid.*, p. 396, "die Hoffnung des wankenden Reiches."

[3] *Ibid.*, pp. 391, 395.

[4] *Ibid.*, pp. 392-394.

[5] Conrad's *Handw. d. Staatsw.*, vol. v, p. 918. *Studien*, pp. 389-390.

own burdens as far as possible on their coloni, but the harder the government pressed them for taxes the more indulgent it became toward their encroachments on the rights of the state peasantry. The old policy of favoring the imperial coloni had to give way to the fiscal necessities of the time. The coloni ceased to be the favored state peasantry and became dependent tenants of rapacious landlords. As they sunk in status many of them chose flight to servility and deserted their ancestral lands.[1] But the desertion of the fields was disastrous to the landlords as they were accountable to the government both for the payment of the taxes of the coloni and the cultivation of the deserted land. Hence it was necessary for the government to secure for them a fixed labor force, so the coloni were bound to the soil. But the adscription to the glebe was not a new principle created by the emperors of the fourth century but merely a more stringent application of the age-old Hellenistic, and pre-Hellenistic principle of ἰδία, which was the real *lex a majoribus constituta* to which Valentinian referred.[2] So thus, concluded Rostovtzeff, there was a return to the serfdom of pre-Hellenistic times. The Hellenistic monarchs had attempted to change the serfs into a state peasantry in their struggle against feudalism; and the Roman emperors of the first and second centuries had followed their example, maintaining the state peasantry in the East and organizing a similar class in the West. But in the third and fourth centuries it had been necessary for the emperors themselves to open the way for a reversion to feudalism. The course of evolution led its way back to earlier conditions and the state peasantry returned to the serfdom from which it had formerly emerged.[3]

[1] Conrad's *Handw. d. Staatsw.*, vol. v, pp. 918-919.

[2] *Cod. Just.*, xi, 51, 1.

[3] *Studien*, pp. 398-401.

The study of the historical development of the colonate in the different provinces reached its most complete form in the work of Rostovtzeff. A generation of scholars from Mommsen to Beaudouin had succeeded in presenting a fairly clear picture of the condition of the African colonus as revealed by the African inscriptions. Rostovtzeff blazed the trail to the East and analysed the Egyptian papyri with such success that as a result of his labors the condition of the Egyptian peasant stands out as clearly as that of the imperial colonus on the African domains. Likewise, in Asia Minor and Sicily, Rostovtzeff made the most of the scanty source material in tracing the history of the peasantry both in Hellenistic and Roman times; and in the last chapter of his book he brought together all the material relating to Africa and presented the first comprehensive account of the agrarian history and development of the colonate in Roman Africa.

As more Eastern documents are discovered no doubt many details in Rostovtzeff's conclusions in regard to agrarian conditions in Egypt and Asia Minor will be found incorrect; but we believe that the main outlines of his research there will stand the test of criticism, although he modestly insists that his work should only be regarded as a "*Vorstudie.*" More debatable, however, is his insistence on "the enormous influence of Hellenistic activity in the Roman Empire." [1] Schulten, who some years earlier had found a number of Hellenistic parallels for the *lex Manciana,* was criticised by Toutain for "*sa passion exagérée pour l'analogie.*" [2] Such a criticism applies with considerably greater force to Rostovtzeff, who regarded the whole agrarian policy of the Roman emperors from Vespasian to Constantine and the development of the colonate in the West as constantly and powerfully affected by Hellenistic influences. Many anal-

[1] Rostovtzeff, *Journal of Egyptian Archaeology,* vi (1920), p. 163.

[2] *Nouv. rev. hist. de droit fr.,* xxiii (1899), p. 309.

ogies, indeed, there were between the domanial policy of the Roman emperors in Africa and of the Hellenistic monarchs in Egypt. But analogy does not always indicate causal connection. There are only a limited number of ways in which human beings can adapt themselves to their environment; where external conditions are alike, men of all nations and ages have reacted toward these conditions in strikingly similar fashion. There was a feudal system in Japan which resembled the feudal system of Western Europe in many respects, although each was utterly unconscious of the other.[1] There was a combination movement in the viking "industry" in the tenth century which had many of the characteristics of the development of American trusts in the nineteenth,[2] while the "boycott" was practiced in Arabia sixteen centuries before the time of Captain Boycott.[3] Where the experience of the past or of contemporaries in other parts of the world is known it may be utilized as a guide to action, *provided that economic or political considerations of the particular time and place create the motive force.* The organization of the Kansas Industrial Court was no doubt somewhat influenced by the experience of Australia and New Zealand in similar courts of arbitration. But it is not at all unlikely that the Kansas Court would have been formed substantially as it was, had Australasia never made an experiment in compulsory arbitration; and certainly the underlying cause for the formation of the court rested in the economic and political situation in post-war Kansas.

How far the imperial policy of Rome was affected by the influence of the East it is difficult to state. As the republi-

[1] *Cf.* Asakawa, "Origin of Feudal Land Tenure in Japan," *Am. Hist. Rev.*, xx (1914), pp. 1-23.

[2] *Cf.* Veblen, "An Early Experiment in Trusts," *The Place of Science in Modern Civilization* (New York, 1919), pp. 497-509.

[3] *Dig.*, xlvii, 11, 9. *Cf.* Heitland, *Agricola*, p. 375.

can institutions decayed and as the Roman Empire assumed more and more the aspect of an absolute monarchy, the policy of the emperors was bound to become more or less similar to that of the rulers of the absolute monarchies, both Hellenistic and Oriental, which had preceded it; and as members of the official bureaucracy were moved from province to province the administrative methods which they had found successful in one province they would be likely to apply in another. Yet, on the whole, the old Roman policy of changing provincial customs and institutions as little as possible seems to have been retained at least until the time of Diocletian. It is far more likely that the *lex Manciana* in Africa instead of being strongly influenced in its formulation by Egyptian revenue laws, as Rostovtzeff believed, was an adaptation of Roman provincial policy to previous Carthaginian practices; and if, as Cuq and Schulten argue,[1] the *lex Manciana* was a law of the Republic promulgated at a time when Egypt was still ruled by the Ptolemies, the Egyptian influence must have been negligible or wholly nonexistent.

It is true that there were many points of similarity between the condition of the African peasant, as regulated by the *lex Manciana* and *lex Hadriana*, and the Egyptian crown peasant of Ptolemaic and Roman times; yet one is not justified in saying that the historical development in each case was not an independent one. Both in Egypt and Africa the peasants were granted remission of rent or taxes for planting fruit trees and vines. But the practice in each province differed in many essential details, while the general policy of remission of rent or taxes for improvement of the land has been practiced time and time again by many nations in different parts of the world. In Africa and Egypt the life of the peasant was closely supervised by imperial officials,

[1] *Cf. supra*, pp. 177-178.

but in Egypt there was no counterpart to the *conductor* who was an essential feature of the African domanial system, while in Africa the peasants could not be moved about from one district to another at the pleasure of the administrative officials. In Egypt the peasant held a precarious or a short-term lease for his tenement over which he had no hereditary rights, while in Africa the colonus held no lease at all but cultivated a plot of land in accordance to the terms of *formae perpetuae,* which were unknown in Egypt; and in case he reclaimed waste or deserted land he received the important *ius possidendi ac fruendi heredique suo relinquendi.* In Africa the coloni furnished a moderate number of days' services to the *conductor* while in Egypt the peasants were oppressed by heavy government *corvées* of all kinds which were defined by custom but not limited by imperial regulations as in Africa. In fact it seems remarkable, not that there were so many points of similarity between agrarian conditions in Egypt and Africa, but rather that the two leading grain provinces of the Empire should have retained so many historically developed differences after centuries of Roman administration.

Again in the colonate legislation of the late Empire Rostovtzeff over-emphasized the Hellenistic influence. He did not go so far as Rudorff or Giraud in regarding the colonate as based on previous servile tenures in Egypt or Greece, for he stated repeatedly that with the exception of some decadent city serfdom in Asia Minor the peasants of the Hellenistic domains were not serfs. But the root of the colonate he found in the practice of ἰδία. In Egypt, although the δημόσιοι γεωργοὶ occasionally lived outside of their native villages, the practice of ἰδία was applied so strictly that the peasants could always be retained in their villages where they were available especially for the heavy government *corvées.* But there is no evidence that ἰδία was applied so rigorously elsewhere in

the East or that it existed at all in the West,[1] except for the purpose of registration for taxes where it corresponded to the old Italian principle of *origo*.[2] So the theory of Rostovtzeff that the adscription to the soil was merely a more stringent application of the practice of ἰδία is not very convincing, at least in regions where ἰδία or *origo* had never affected the freedom of movement of the population. Even in Egypt where ἰδία had always been strictly enforced on a population which had been a subject race for many centuries, the condition of the peasantry was far different from that of the servile colonate. The colonus was attached to an estate from which he could not be removed even by his master. The Egyptian γεωργὸς had no such security of tenure but could be removed from one place to another at the arbitrary will of the government officials. The colonus was a perpetual and hereditary tenant whose rents and obligations could not be augmented in any way and to whom the courts of justice were open in case the proprietor encroached on his legal rights. The Egyptian state peasant on the other hand had no hereditary rights in his tenement, his lease could be changed at the pleasure of the officials placed over him, and he had no access to the courts. To the γεωργὸς the Roman colonate may indeed have been a "meliorative" institution.

As for the cause of the final legal attachment of the coloni to the soil Rostovtzeff went back to the old taxation theory of Revillout, the inadequacy of which we have already discussed.[3] There is no doubt that the problem of the administration of taxation was an important one in the late Empire but the problem of *production* was far more fundamental

[1] *Cf. supra*, p. 222, n. 1.

[2] *Cf.* Revillout, *Rev. hist. de droit fr.*, iii (1857), pp. 217-220.

[3] *Cf. supra*, pp. 11-12, 134-135, 162-163.

and vital,[1] for not only the resources of the government but the resources and life itself of the declining Empire depended upon maintaining production, especially agricultural production. In his outline of the agrarian history of Egypt Rostovtzeff showed how various types of emphyteutic sales and leases were granted on the desert land (γῆ χέρσος) to prevent the encroachments of the desert on the fertile Nile valley, and where emphyteutic leases were not sufficient to keep such land in cultivation how the Egyptian government made use of the forced lease and ἐπιβολή. It is strange that he did not likewise emphasize the economic conditions leading up to the utilization of emphyteusis and ἐπιβολὴ on the gigantic scale with which they were applied in the late Empire. It is the belief of the writer that the same economic conditions which brought forth emphyteusis and ἐπιβολὴ led also to the contemporaneous colonate legislation, the causes of which struck far deeper roots than the desire of the imperial administration to assure the proprietors of a steady agricultural working force so that the treasury in turn might be assured of a regular revenue.

The most recent theory of the colonate was presented in 1921 by Heitland.[2] The *Agricola* of Heitland is largely a compilation of all the references to agricultural labor in antiquity obtained from a study of the works of Greek and Latin authors and of inscriptions. Most of the writers who had discussed the origin of the colonate since 1880 had also written commentaries on the recent archeological finds in Africa and the East and naturally the newer sources had had a preponderating influence in forming their views. An encyclopedic investigation like that of Heitland, however, al-

[1] *Cf.* Westermann, "The Economic Basis of the Decline of Ancient Culture," *Amer. Hist. Rev.*, xx (1915), p. 731.

[2] *Agricola* (Cambridge, 1921), pp. 157-161, 201-212, 355-361, 379-384, 393-398, *et passim.*

though it necessarily resulted in much repetition and little continuity, at least had the advantage of giving the author a well-balanced and catholic point of view. The importance of the epigraphical discoveries since 1880 was recognized but not over-emphasized, and although Heitland's theory of the colonate was largely adapted from that of previous writers, it showed a capacity for evaluation of the evidence which was lacking in many of his predecessors.

The serf-colonate was not the result of any single cause, Heitland maintained, but developed from a number of influences.[1] One of these was the gradual depression of the status of the free tenant, a factor which had already been stressed by a number of writers, of which Heitland singled out Fustel de Coulanges, Seeck, and Rostovtzeff with special approval. The growing scarcity of slaves at the beginning of the Empire had caused a considerable development of a tenant-farming system, although slave-culture long remained the principal method of exploiting the great estates. The services of tenants were required on the demesne during the busy season, Heitland believed, and the obligation to perform *operae* was particularly enforced against debtor tenants who were very numerous.[2] As slavery gradually declined the work of the coloni on the home farm became more and more necessary and consequently their *operae* were gradually increased in return for abatements in the rents which the coloni always found it difficult to pay. The result was that the coloni slowly sank into dependent socage tenants. On the domains of the emperor likewise there was a gradual depression in the status of the imperial coloni due to the encroachments of the *conductores,* although these were partially checked by the imperial authority during the first and second centuries. But by the third century the tenantry

[1] *Ibid.*, p. 361.

[2] *Ibid.*, pp. 157, 161.

everywhere had fallen into an actual semi-servile condition notwithstanding the fact that legally they were still free.[1]

The depression of the tenant farmer through the encroachments of the landlords was not the only movement in the direction of serfdom. The chained slave of the Republic was becoming a rare phenomenon, his place being taken by a native-bred slave who held a plot in servile tenure to his master. Barbarian captives, whom Heitland, following Seeck, identified with the *inquilini*, were attached to the soil by the second century.[2] But these various tendencies toward serfdom were crystallized into legal form by the policy of the imperial administration itself. Seeck and Rostovtzeff had looked upon the legislation of the fourth century as undertaken primarily in the interests of the proprietor class upon whose strength rested the sole hope of survival of the Empire. But Heitland criticized their views by showing that the colonate legislation was as much a limitation of the rights of the proprietor over his tenants as it was a limitation of the right of the tenant to freedom of movement. The institution of the colonate was not designed in order to favor any particular class, he said, but "to guarantee a maximum of total cultivation in the interest of the Empire as a whole."[3] The greatest anxiety which the imperial administrator had to face was the fear that the food supply might fail and much of the imperial policy from the first century to the fall of the Empire can be understood only in view of this consideration. No doubt, as Rostovtzeff had said, the experience of the East had helped in "maturing" the policy of the administration, but the general aim was controlled by the "ever-pressing need of a food supply."[4] The careful fostering of the coloni on the im-

[1] *Ibid.*, pp. 209, 256, 359.

[2] *Ibid.*, pp. 340, 360. *Dig.*, xxx, 1, 112, *pr.* *Cf. supra*, p. 193.

[3] *Ibid.*, p. 394.

[4] *Ibid.*, p. 208.

perial domains, their exemptions from municipal *munera*, the many encouragements given to them to increase the area of the arable land and the protection they received from encroachments of the *conductores* were all in line with this policy. But the confusion and wars of the third century threatened to break down the system completely. Not only the devastated areas but the whole Empire suffered, for the the regions unvisited by war had to bear the increased burden of supporting the Empire alone. The more vigorous government of Diocletian and his successors checked the decline but the heavier taxes proved so oppressive that the coloni everywhere deserted their holdings. In the face of this agricultural crisis which threatened the Empire with starvation the coloni were attached to the soil in the last desperate effort to solve the food question. To bind free Roman citizens to the soil as serfs was an autocratic step which might have led to revolution but for the fact that the coloni had everywhere fallen into a condition of extreme dependence, so that the legislation of the fourth century was really "no more than a recognition *de iure* of a condition already created *de facto* by a long course of servilizing influences."[1]

The great virtue of Heitland's treatment of the origin of the colonate lay in his clear recognition of the vital importance which the problem of the production of food stuffs had for the Empire. The policy of the Roman emperors may have been shaped after Eastern analogies, it may have favored now the peasant and now the proprietor, but the underlying motive, he said, was always to promote by encouragement or force the production of food supplies. But why did the problem of the production of an adequate supply of food products prove to be one of increasing difficulty, so that the imperial policy, which had begun by attempting to make the lot of the coloni an attractive one, ended by making

[1] *Ibid.*, p. 383. *Cf.*, pp. 211, 384, 393.

them serfs? This is the central problem not only of the origin of the colonate but of the decline of the Roman Empire itself; for the establishment of the servile colonate was merely the final and most drastic step which the doomed Empire took to save itself from disintegration into innumerable tiny fragments each of which could barely produce enough for its own needs without being able to yield a surplus sufficient to maintain a strong central government.

Unfortunately Heitland's explanation of the fall of Rome can give us little help in understanding the change of the imperial policy in regard to the production of food stuffs, for he related the decline of the Roman Empire primarily to inherent weaknesses in its political structure.[1] But in 1916 Simkhovitch presented a new explanation of the disintegration of the ancient world which not only stressed the fundamental importance of agricultural production to the life of the Empire, but at the same time offered a convincing reason for the decline of production, the desertion of the fields, and the frantic legislation of the late Empire, emphyteusis, ἐπιβολή, and the colonate.[2] The cause of the ruin of Rome was *the progressive deterioration and final exhaustion of the soil of the Empire.* In the opinion of the writer this is the explanation which can most adequately account for the colonate; and in the succeeding pages it is his purpose to reëxamine the evidence which relates to the historical development of the colonate and test the validity of the theory of Simkhovitch as an explanation of its origin.[3]

[1] *Ibid.*, pp. 379-380.

[2] Simkhovitch, "Rome's Fall Reconsidered," *Pol. Sci. Quart.*, xxxi (1916), pp. 201-243.

[3] In 1920, Frank, in his *Economic History of Rome* (p. 301) followed the theory of Simkhovitch to the extent of accounting for the serf-colonate in Africa as due to the desertion by the tenantry of the thin African soil, which had been exhausted by Roman methods of cultivation. Three years later (*History of Rome*, New York, 1923, p. 559) he stated that the colonate legislation, which he believed was inaugurated by Diocletian, was caused by the fact that "the coloni were in many places giving up the struggle with a land constantly deteriorating under tenant culture."

CHAPTER VIII

The Coloni of the Republic

The word *colonus* is derived from the verb *colere,* to cultivate; and originally it referred simply to a cultivator, as its etymology implies. It is a very ancient word and carries us back to prehistoric times. Traditionally the colonus was a proprietor of a small piece of land.[1] The legends upon which Dionysius of Halicarnassus based his *Romanae Antiquitates* represented the early kings distributing the land to their subjects in small plots. Romulus, after he had divided the land into thirty equal portions and allotted one to each *curia,* then distributed the land among his people so that each citizen should have an equal amount;[2] and his policy was followed by his successors.[3] This early equality among Roman citizens which lasted well along into the period of the Republic was a very strong Roman tradition. Pliny the Elder stated that the size of the holding which a citizen possessed after the expulsion of the kings was seven *jugera,* and that Curius Dentatus, the conqueror of the Samnites, declared the citizen who was not content with seven jugera was dangerous to the Republic.[4] Unlike the Spartans, the Romans held agriculture in great esteem,[5] and

[1] Wallon, *L'Esclavage dans l'antiquité,* vol. ii, p. 73. Revillout, *Rev. hist. de droit fr.,* vol. ii (1856), p. 419.

[2] Dionys., *Antiq.,* ii, 7. "μιὰ μὲν οὖν αὕτη διαίρεσις ὑπὸ Ῥωμύλου τῶν τε ἀνδρῶν καὶ τῆς χώρας, περιέχουσα τὴν κοινὴν καὶ μεγίζην ἰσότητα τοιάδε τις ἦν."

[3] Dionys., *op. cit.,* iii, 1; Cic., *De Repub.,* ii, 14. *Cf.* Vergil., *Aeneid,* vi, 816.

[4] Plin., *N. H.,* xviii, 4. *Cf.* Valerius Maximus, *Memor.,* iv, 3, 5.

[5] *Cf.* Cato, *De Agric., pr.*; Varro, *R. R.,* iii, 11.

their legends pointed with as much pride to the zealous industry of a Cincinnatus on his humble four *jugera* plot or of a Regulus with his seven *jugera* as to their military prowess.[1]

On the other hand certain modern writers argue that the earliest form of agrarian organization of the Romans after the settlement of the wandering tribes was that of relatively large estates cultivated by serfs.[2] This appears to have been the organization of many ancient states whose early history is somewhat better known than that of Rome, such as Sparta, Crete, and Thessaly;[3] and certain features of Roman economic life such as the institution of clientship, the miserable political and social condition of the plebeians at the beginning of historic times, and the assignment of land in strips[4] in the later colonies seem to point back to an earlier servile organization rather than the legendary state of the small independent farmer.[5] Above all, the existence of the remains of a very elaborate drainage system, which was built under hundreds of the small plots, which later Roman accounts unanimously attributed to their ancestors, seems to be more conformable with a "villa" system of dependent servile holdings, than that of numerous small proprietors.[6]

Whatever the status of the colonus in prehistoric Rome

[1] Plin., *N. H.*, xviii, 4; Valer. Max., *Memor.*, iv, 4, 6.

[2] Neumann, *Hist. Zeitsch.*, xcvi (1906), p. 30; Frank, *Economic History of Rome* (Baltimore, 1920), pp. 7-11, 22, 37-38; *cf.* Heitland, *Agricola*, pp. 27-28; Gras, *Introduction to Economic History* (New York, 1922), p. 79.

[3] *Cf. supra*, pp. 70-73.

[4] *Cf.* Lachmann, *Liber Colon.*, in *Gromatici Veteres*, p. 229, "Ager eius in *lacineis* est adsignatus; p. 236, Ager . . . in *lacineis* . . . colonis eorum est adsignatus.

[5] Frank, *op. cit.*, pp. 10-11.

[6] *Ibid.*, pp. 7-9. *Cf.*, pp. 22, 39.

may have been, it is certain that in historical times the colonus was not a serf. The word *colonus* in the period of the Republic was used ordinarily to designate either a settler in one of the numerous colonies which Rome established on conquered territory, or a small tenant who leased a plot of land either from the *ager publicus* or from the possessions of a wealthy patrician.[1] The little city state of Rome launched its career of conquest very early in its history. Almost immediately the problem of the disposal of the conquered land presented itself and proved to be a constant irritant to civil strife. Two policies were followed which in time came to conflict with each other.[2] A part of the conquered land was granted to poor Roman citizens as colonists.[3] Colonies thus established provided strong Roman nuclei in the conquered territory whose interests were identical with those of the mother city and whose presence in the still hostile land did much to prevent rebellion and to insure the loyalty of the newly organized territory.[4] Even more important was the consideration that colonies offered provision for the landless poor of Rome and held out the promise of the development of a strong peasant class, from which the early Romans thought "both the best citizens and the sturdiest soldiers were produced."[5] These settlements were known as *coloniae* and the settlers as *coloni*, our first definite use of that term in historical times.[6]

The second policy of the Roman Republic toward the

[1] *Cf.* Revillout, *op. cit.*, pp. 421-431.

[2] *Cf.* Mommsen, *History of Rome* (Dickson translation, New York, 1905), vol. iii, p. 304.

[3] Dionys., *Antiq.*, vi, 43; Appian, *Bel. Civ.*, ii, 140.

[4] Dionys., *loc. cit.*; Appian, *Bel. Civ.* i, 7.

[5] Cato, *De Agric., pr.* "Ex agricolis et viri fortissimi et milites strenuissimi gignuntur."

[6] Sicul. Flac., in *Gromatici Veteres*, Ed. Lachmann, p. 135; Isidor., *Etymolog.*, xv, 2, 9.

subject territory was to encourage the reclamation of the land, which had usually been thoroughly devastated in the course of the war,[1] in order to obtain a revenue from it. Some of the land was sold outright by the quaestors;[2] but by far the largest proportion was retained as the *ager publicus*.[3] This land was leased to anyone who agreed to cultivate it and pay to the state a *vectigal* of one-tenth of the harvest of wheat and one-fifth of the other fruits.[4] Possibly at first the plebeians were prohibited by law from taking up claims in the *ager publicus*.[5] But at any rate they were too poor to be able to exploit the conquered and wasted land to advantage, and the patricians, more bountifully supplied with capital and with an immediate labor supply in their slaves and clients,[6] hastened to take possession of as much of the *ager publicus* as they could.[7]

But what became of the inhabitants of the conquered lands? It was not the Roman custom to massacre her defeated foes nor did she at this early date enslave whole nations.[8] The majority of the subject peasantry apparently

[1] *Cf.* Liv., ii, 62. "Vastati agri sunt. Incendiis deinde non villarum modo sed etiam vicorum..."

[2] Appian, *Bel. Civ.*, i, 7.

[3] Cic., *In Verr.*, ii, 3, 13. "Civitates sunt bello a majoribus nostris subactae; quarum ager cum esset publicus populi Romani factus."

[4] Appian, *op. cit.*, i, 7.

[5] At least Cassius Hemina refers to "quicumque propter plebitatem agro publico eiecto sunt." Nonius Marcellus, ii, 149.

[6] Festus, *De Verb. Signif.*, under *Patres*. "Patres senatores ideo appellati sunt, quia agrorum partes adtribuerant tenuioribus ac si liberis propriis." *Cf. Dig.*, xliii, 26, 6, 2.

[7] Liv., iv, 51. "Non in retinendis modo publicis agris, quos iam teneret, pertinacem nobilitatem esse, sed ne vacuum quidem agrum nuper ex hostibus captum plebi dividere, mox paucis, ut cetera, futurum praedae." *Cf. ibid.*, vi, 5; Revillout, *op. cit.*, pp. 428-430; Greenidge, *History of Rome* (New York, 1905), vol. i, p. 74.

[8] Liv., vii, 27.

became either direct tenants of the *ager publicus* or subtenants of patrician lessees.[1] These small tenants were known as *coloni*[2] and the conception of the colonus as a free tenant *par excellence* arose, which was to last until the time of the late Empire.

The patricians had the opportunity of first acquiring large tracts of the *ager publicus;* and they were not slow in taking advantage of their favorable position and in increasing the extent of their possessions. Before long complaints commenced to arise that the patricians were engrossing all the land[3] and popular agitators began to urge the passage of a law limiting the size of their holdings in the *ager publicus.* "Are they so shameless," cried a plebeian orator, "as to demand that although the allotment of land to a plebeian amounted to a bare two *jugera* apiece, they themselves should be allowed to possess more than five hundred *jugera* each; that single men should be permitted to possess the share of almost three hundred citizens while the plot of land granted to the plebeian scarcely sufficed for a meager habitations or a place of burial?"[4] Even more serious than the growth of large estates was the rapid extension of slavery. Slaves had not occupied an important place in early Roman society, for in small-scale agriculture there was very little need of them.[5] But with the growth of *latifundia,* cultivation by means of slaves came to be preferred to the

[1] Appian, *Bel. Civ.,* ii, 140; Gaius, *Institut.,* ii, 7; Cic., *In Verr.* ii, 3, 12-15; 228.

[2] Isidor., *Etymol.,* ix, 4, 36. "Coloni sunt cultores advenae..." Cic., *In Verr.* ii, 3, 98. "Siculi, coloni populi Romani atque aratores."

[3] Liv., vi, 37.

[4] Liv., vi, 36. "Auderentne postulare ut, cum bina iugera agri plebi dividerentur ipsis plus quingenta iugera haberet liceret, ut singuli prope trecentorum civium possiderent agros, plebeio homini vix ad tectum necessarium aut locum sepulturae suus pateret ager?"

Valer. Max., *Memor.,* iv, 4, 11.

small tenantry. Not only could better discipline be maintained but also the slaves could not be taken away for military service like the coloni, and a considerable profit could be obtained from their offspring.[1] Consequently, our sources bear record to the steady disappearance of the small proprietors and tenant farmers and their replacement on the great estates by gangs of slaves.[2]

In the earlier period of Roman history the enslavement of plebeians for their debts [3] was probably a more important source of slaves than war. But certainly from the time of the Punic wars,[4] and possibly earlier,[5] war became the principal source of slaves; and as soon as Rome commenced to extend her conquests beyond the peninsula slaves were imported in enormous numbers. Sicily, Sardinia, Cisalpine Gaul, and Spain furnished large quotas.[6] Even greater numbers were imported into Italy after the victories of Aemilius Paulus. From Epirus alone 150,000 captives were sold.[7] The prisoners which Marius captured after the battles of Aquae Sextiae and Vercellae numbered 90,000 Teutons and 60,000 Cimbri;[8] Caesar's victories in Gaul were said to have yielded him a million captives to be sold as slaves,[9]

[1] Appian, *Bel. Civ.*, i, 7; *cf.* Heitland, *Agricola*, p. 144; Hartmann, *Arch.-epigr. Mitt.*, vol. xvii (1894), p. 125.

[2] Liv., vi, 12; Plutarch, *Tib. Grac.*, 8; Cic., *C. Rull.*, ii, 30; Colum., *De R.R.*, i, *pr.*, 3.

[3] This was one of the principal reasons for the bitter discontent of the plebeians and a leading cause of their struggles with the patricians. *Cf.* Wallon, *L'Esclavage dans l'antiquité*, ii, pp. 26-30. Liv., ii, 23; 27; 31; vi, 11; 14; 36.

[4] Liv., xxii, 60.

[5] Livy (x, 46) gives an account of the sale of Samnite prisoners for 2,033,000 *asses* in 293 B. C.

[6] Liv., xli, 28; Appian, *Bel. Hisp.*, 99.

[7] Liv., xlv, 34.

[8] Liv., *Epit.*, lxviii.

[9] Appian, *De Reb. Gall.*, 2; Plutarch, *Caes.*, 15.

while after Lucullus' campaign in the Pontus against Mithradates slaves sold for as little as four drachmae apiece.[1]

Piracy before the campaign of Pompey was almost as important a source of slaves as war. Strabo related that as many as ten thousand (μυριάς) slaves a day were sold at the great slave market at Delos by the pirates.[2] They carried on their nefarious work not only on the sea but on the land as well, and organized raids far inland, frequently in Italy itself, where they captured unprotected peasants and sold them as slaves.[3] Ingram estimates that in the late Republic the slaves outnumbered the free three to one.[4] And so, Pliny lamented, the fields of Italy which were once "tilled by the hands of generals and exulted beneath a plowshare crowned with wreaths of laurel and guided by a husbandman graced with triumphs", are now "cultivated by slaves whose legs are in chains and tilled by the hands of malefactors and men with branded faces".[5]

Slavery had always been very extensive in the ancient world, but it had never been employed by any people before with the reckless energy so characteristic of the Romans in all their works. The slaves were divided into gangs of ten, called *decuriae,* placed under the control of a freedman.[6] If the freedman did not perform his work of direction to the best of his master's interest he could be reduced to slavery,[7]

[1] Appian, *Bel. Mithr.*, 78.

[2] Strabo, xiv, 5, 2.

[3] Suet., *Aug.*, 32; *Tib.*, 8; Cic., *Pro Cluent.*, 7.

[4] Ingram, *History of Slavery* (London, 1895), p. 43.

[5] Plin., *N. H.*, xviii, 4. "Ipsorum tunc manibus imperatorum colebantur agri, . . gaudente terra vomere laureato et triumphali aratore . . . at nunc eadem illa vincti pedes, damnatae manus inscriptique vultus exercent."

[6] Colum., *De R. R.*, i, 9.

[7] *Frag. Iur. Rom. Vatic.*, 272, in Huschke, *Jurisprud. Antejust.*, p. 774. *Cf.* Seebohm, *English Village Community*, 4th Ed. (London, 1905), p. 265.

and impelled by this fear he drove the slaves under him to their limit of physical endurance. To prevent their revolt or flight from this tyranny the slaves worked with ball and chain and at night were lodged in underground prisons (*ergastula*).[1] Cato considered it cheaper to work a slave to death rather than let him grow old in the service, and he advised selling old or infirm slaves as ruthlessly as one would sell old and worn-out cattle, useless wagons, or iron tools.[2] The horrible savagery of the slaves in the servile wars is proof of the hatred and resentment engendered by such heartless treatment.

The criminal exploitation of slave labor by the Romans used up the slaves so rapidly that constant new accretions were necessary to maintain the supply. The decline in slave population was later to become a serious problem, when the era of conquest ceased to bring in fresh annual hordes of captives. But far more disastrous in its ultimate consequences was the effect of the slave-driven agriculture on the land. Slave labor is always extremely wasteful and exhausting to the soil. "The loving care which agriculture needs"[3] is altogether absent. "It is the very worst plan of all," said Pliny the Elder, "to have land tilled by slaves from the *ergastula,* as indeed is anything that is done by those who have no hope."[4] "Especially grain land," said Columella, "do slaves damage greatly. They do not plow the ground carefully, and they charge to your account much

[1] Plaut., *Captiv.*, 729. "Nam noctu neruo unictus custodibitur." *Cf.* Wallon., *op. cit.*, vol. ii, pp. 226 *et seq.*

[2] Cato, *De Agric.*, ii, 7. "Boves vetulos, armenta delicula, oves deliculas, lanam, pelles, plostrum vetus, ferramenta vetera, *servum senem, servum morbosum,* et siquid aliut supersit vendat." *Cf.* Plutarch, *Cato Maj.*, 21; *Cod. Theod.*, ix, 12, 1 and 2.

[3] Heitland, *op. cit.*, p. 159.

[4] Plin., *N. H.*, xviii, 7. "Coli rura ab ergastulis pessumum est, et quicquid agitur a desperantibus."

more seed than they really have sown; neither do they take care of what they have planted so that it will yield a good crop. Consequently it happens that a field is all too often discredited." [1]

If the landlords had all been like Cato who personally supervised the cultivation of his estates, the effects of slave culture on the soil might not have been so deleterious. But Cato was an exception even for his own time and the proprietor who himself managed his estate became increasingly rare in succeeding generations. The owners of the great *latifundia* were important personages and they wished to be at Rome in the center of a rapidly expanding empire where the exciting game of politics was to be played with the rich harvest of a provincial proconsulship as its ultimate reward. Their estates were left in charge of their slave stewards or *vilici,* whose sole responsibility lay in supplying a steady income to the lord, which he could use in gaining popularity and votes in the capital by means of providing costly spectacles for the plebs and bribes for the more influential.[2] So long as the income was forthcoming the *vilicus* received little interference on the part of the master. Only when the returns commenced to decline were questions asked, a new *vilicus* appointed, and the old one allowed to fall back into the ranks of the mass of slaves.

Such a system inevitably led to exhausting cultivation of the land. Conservation methods were impossible. The *vilici,* even if they were acquainted with the wise practices advocated by Cato, Varro, and other agricultural writers, dared not practice them. The land must be cultivated in

[1] Colum., *De R. R.,* i, 7. "Praecipue frumentarium (agrum) ... maxime vexant servi ... nec industrie terram vertant, longeque plus imputant seminis jacti, quam quod severint: sed nec quod terrae mandaverint sic adjuvant, ut recti proveniat.... Ita fit ut ... ager saepius infametur."

[2] Heitland, *Agricola,* pp. 153, 157.

such a way as to yield the greatest immediate profit or else they were lost. Nor were the small possessors and tenant farmers in a better position in face of such competition as this. They were compelled to resort to the same methods of wasteful exploitation practiced on the *latifundia* or else go to the wall. They were always on the margin and when they were drafted in the army or an invading enemy ravaged their lands they had the greatest difficulty in paying their debts and keeping themselves out of a debtor's prison.[1]

Before long the baneful results of this exhausting cultivation commenced to appear. Italy, formerly so fertile,[2] and regarded by the Greeks as an inexhaustible granary, now commenced to suffer from scarcity of grain and from famine.[3] Farms were deserted as early as 436 B. C.,[4] if we can trust the account of Livy, and grain had to be imported from Sicily soon afterward.[5] Possibly nothing is more significant as a mark of the growing exhaustion of the soil than the increasing size of the holdings considered necessary to support a family.[6] The earliest assignments to colonists were from two to seven *jugera* in size;[7] but in the second century before Christ the amount of land found necessary to induce men to go as colonists to certain districts was fifty *jugera* or more.[8] Pliny, writing toward

[1] *Cf.* Liv., vii, 19; 27; 42; xxviii, 11; xxxiii, 14.

[2] Strabo, vi, 4, 1.

[3] Liv., ii, 34; 52; iii, 32; iv, 12; 25; 52.

[4] Liv., iv, 12.

[5] Liv., iv, 25; 52.

[6] *Cf.* Simkhovitch, *Pol. Sci. Quart.*, xxxi (1916), p. 206; Oliver, *Roman Economic Conditions* (Toronto, 1907), pp. 30-31.

[7] Liv. iv, 47 (415 B. C., 2 *jugera*); v, 24 (392 B. C., 3 7/12 *jugera*); v, 30 (390 B. C., 7 *jugera*); vi, 16 (382 B. C., 2 1/2 *jugera*); viii, 21 (326 B. C., 2 *jugera*).

[8] Liv., xxxvii, 57 (189 B. C., Bononia, 50-70 *jugera*); xl, 34 (181 B. C., Aquileia, 50-140 *jugera*).

the close of the first century after Christ, said that seven *jugera* was the amount of land allotted to the people after the expulsion of the kings and considered it almost miraculous that so small a plot of land should have sufficed to support a family.[1] But in the second century before Christ the assignments of the Gracchi in their attempt to reestablish a peasant class in Italy were thirty *jugera;*[2] and in the succeeding century the allotments of the triumvirs were fifty[3] *jugera* and of Caesar from thirty-five to sixty-six and one-third *jugera.*[4]

The ruin of Italian agriculture has frequently been laid to the competition of grain tithes which commenced to pour into Rome after the First Punic War.[5] But such an explanation is *prima facie* absurd, for the great Roman landlords controlled the state policy and they would never have permitted Sicilian grain to enter the Roman market if their Italian possessions had not already ceased to yield a crop of wheat sufficient for the demand.[6] Nor is the explanation that the decadence of Italian agriculture was due to the havoc wrought on the small farmer class by Hannibal's long occupation of Italy[7] any more tenable. Carthage suffered from the war as much or more than Rome, yet a generation later she had so far recovered that she could ship 1,000,000 *modii* of wheat and 500,000 *modii* of barley to Rome to gain favor against Masinissa,[8] and could frighten old Cato

[1] Plin., *N. H.*, xviii, 4.

[2] Bruns, *Fontes*, i, 3, 11, line 14.

[3] Frontinus, p. 30; Hyginus, p. 170, *Gromatici Veteres*, Ed. Lachmann.

[4] Hyginus, *op. cit.*, p. 201. *Cf.* Simkhovitch, *loc. cit.*

[5] *Cf.* Mommsen, *op. cit.*, vol. iii, pp. 75 *et seq.*

[6] *Cf.* Frank, *Economic History of Rome*, p. 57.

[7] Davis, *The Influence of Wealth in Imperial Rome* (New York, 1910), p. 237; Heitland, *op. cit.*, p. 144; Mommsen, *op. cit.*, vol. iii, p. 100.

[8] Liv., xliii, 6.

with her agricultural prosperity.[1] The devastations of Hannibal merely accelerated the decline of Italian agriculture. It had set in before the Punic wars, and the long period of safety from invasion which followed the defeat of Hannibal brought no recovery.[2]

In medieval England after the soil became exhausted the arable land was converted into pastures and the common fields were enclosed.[3] A similar transformation took place in Italy on a very much grander scale, and the great slave plantations were turned into enormous sheep and cattle ranches with slaves as herdsmen.[4] The ranch required less labor and less oversight; it needed less capital and ran less chance of loss; and it furnished a larger and more certain net produce.[5] Just as in the enclosure movement in England there were many cases of the eviction of tenants and of the expropriation of small proprietors.[6] But in the majority of cases the rich graziers probably merely took over land which was already being deserted, for from the beginning of the second century before Christ there are frequent references to *agri deserti*. In 186 B. C. the consul Spurius Postumus in the course of a tour of Italy which he was

[1] Plutarch, *Cato Maj.*, 27.

[2] *Cf.* Greenidge, *History of Rome* (New York, 1905), vol. i, pp. 69-72.

[3] *Cf.* Bradley, *The Enclosures in England* (New York, 1918).

[4] Varro, *R. R.*, i, 2, 17; ii, 10, 4-5; Appian, *Bel Civ.*, i, 7; Suet., *Jul.*, 42.

[5] *Cf.* Wallon, *op. cit.*, ii, p. 351. "A la grande culture, qui avait diminué déjà le nombre des travailleurs, on préféra un autre mode qui permit de le réduire encore et de le moins surveiller, qui demandât moins de mise de fonds, qui courût moins de chances de perte, qui donnât, en un mot, un produit net plus grand et plus sur; et on crut le trouver dans le système des pâturages." *Cf.* Varro, i, 7, 10. "Alii dant primatum bonis pratis, ut ego quoque; a quo antiqui prata parata apellarunt."

[6] Appian, *Bel. Civ.*, i, 7. Seneca, *Epist.*, xc, 39; Sallust, *Ep. ad Caes.*, ii, 5; *Jug.*, xli; Quint., *Declam.*, xiii, 4; Horat., *Od.*, ii, 18; Apuleius, *Metamorph.*, ix, 35.

making discovered that the colonies of Sipontum on the Adriatic and Buxentum on the Mediterranean had been abandoned by their colonists.[1] In 180 B. C. the *ager publicus* in Samnium was so far deserted that forty thousand Ligurians were settled there and given 150,000 sesterces to provide necessaries for their new homes.[2] A half-century later Tiberius Gracchus traveling through Etruria was so struck with the desolate character of the country that, according to the statement of his brother Caius, he first was impressed with the necessity for agrarian reform.[3] But although assignments of land were made repeatedly they had little result, for the coloni almost immediately deserted the exhausted land. Sulla offered thousands of *jugera* to his legions, but the veterans soon abandoned their holdings;[4] nor were the attempts to settle veterans on the land during the early years of the Empire more successful.[5] A very considerable portion of the army of Catiline was made up of country youths who had been unable to make a livelihood on the farms, and, attracted by the corn doles of the city, had given up the "thankless labor" of the fields for the idle leisure of the city.[6]

Agriculture had ceased to be profitable. There was no question about it in the minds of the writers of the time. "Cato," Plutarch tells us, "declared that farming was more

[1] Liv., xxxix, 23.

[2] Liv., xl, 38.

[3] Plutarch, *Tib. Gracch.*, 8. Rutilius Namatianus found the same district in a decadent condition five centuries later. *De Reditu suo*, lines 409-415.

[4] Cic., *C. Rull.*, ii, 28; 36.

[5] Tac., *Ann.*, xiv, 27.

[6] Sall., *Catil.*, xxxvii, 7. "Praeterea iuventus, quae in agris manum mercede *inopiam toleraverat*, privatis atque publicis largitionibus excita urbanum otium *ingrato labori* praetulerat.

of an amusement than a source of income and preferred investing his money in remunerative undertakings such as marshes which required draining,[1] land which would produce an income by pasturage or by sale of wood and the like." [2] Cicero related that "when he (Cato the Elder) was asked what was the most profitable method of utilizing one's property, he answered, 'Good pasture'. What next? 'Fairly good pasture.' What third? 'Poor pasture.' What fourth? 'Agriculture.'" [3] Cato regarded the planting of vineyards as the most profitable means of cultivating an estate in case the land was fit for it.[4] Since the systematic culture of the vine was introduced rather late in the Republic,[5] the slopes of the hills and of the mountains were still fertile in the time of Cato. But in another century vine culture was following in the unfortunate footsteps of the cultivation of grain. Varro regarded pasturage as more profitable than vineyards,[6] and stated that there were those who believed that a vineyard cost as much as it produced." [7] Wine as well as grain was already being imported in the time of Varro,[8] just as it was a hundred years later into

[1] For an undrained marsh still retained its native fertility. *Cf.* Simkhovitch, *op. cit.*, p. 213.

[2] Plutarch, *Cat Maj.*, 21. Trans. by Stewart. *Cf. ibid.*, 25.

[3] Cic., *De Off.*, ii, 26. "A quo (Cato senex) cum quaereretur quid maxime in re familiari expediret, respondit, 'bene pascere'. Quid secundum? 'Salis bene pascere'. Quid tertium? 'Male pascere'. Quid quartum? 'Arare'".

[4] Cato, *De Agric.*, i, 7. "Vinea est prima si vino bono vel si vino multo est."

[5] Plin., *N. H.*, xiv, 13-14.

[6] *R. R.*, i, 7, 10. "Alli dant primatum bonis pratis, ut ego."

[7] *Ibid.*, i, 8, 1. "Contra vineam sunt qui putent sumptu fructum devorare."

[8] *Ibid.*, ii, *pr.*, 3. "Frumentum locamus qui nobis advehat, qui saturi fiamus, ex Africa et Sardinia, et navibus vindemiam condimus ex insula Coa et Chia."

Latium itself, which had once been so fertile as to be called the land of Saturn,[1] but which in the first century of the Empire was considered even worse than "deserted Apulia".[2] On the estates of the nobles Horace lamented that the regal palace and the stagnant lake had left few acres for the plow, and that violets and myrtles were planted where olives grew before;[3] while among the plebs Vergil complained that no one regarded the plow as worthy of honor, and the fields lay idle and deserted with their cultivators away.[4]

One of the most serious consequences of the desertion of the fields and the conversion of arable land into great slave-worked ranches was the increasing unhealthfulness of the country districts.[5] The Italian climate was sultry and unless the land was drained constantly swamps breeding the

[1] Colum., *De R. R.*, i, *pr.* "Itaque in hoc Latio et Saturnia terra, ubi dii cultus agrorum progeniem suam docuerant, ibi nunc ad hastam locamus, ut nobis ex transmarinis provinciis advehatur frumentum, ne fame laboremus; et vindemias condimus ex insulis Cycladibus, ac regionibus Boeticis Gallicisque." *Cf.* Simkhovitch, *op. cit.*, p. 214.

[2] Senec., *Epist.*, lxxxvii, 7. "Divitem illum putas,..quia in omnibus provinciis arat, quia tantum suburbani agri possidet, quantum *invidiose* in desertis Apuliae possideret." *Cf.* Heisterbergk, *Die Entstehung des Colonats*, p. 60.

[3] Horat., *Od.*, ii, 15.

> Iam pauca aratio iugera regiae
> Moles relinquent; undique latius
> Extenta visentur Lucrino
> Stagna lacu, platanusque caelebs
> Evincet ulmos; tum violaria et
> Myrtus et omnis copia narium
> Spargent olivetis odorem
> Fertilibus domino priori.

[4] Vergil., *Georg.*, i, 506-507.

> "Non ullus aratro
> Dignus honos; squalent abductis arva colonis."

[5] *Cf.* Dureau de la Malle, *Economie politique des Romains*, vol. ii, pp. 7-52; Lanciani, *Wanderings in the Roman Campagna*, pp. 2 *et seq.*

malarial mosquito were the inevitable consequence.[1] When the land was divided into small farms the first care of the peasant was to see that the water of the heavy rains was drained off. But after the land was converted into great ranches of many square miles in extent nothing was done to prevent the formation of pestilent marshes.[2] The result was the great scourge of malaria.[3] Mentioned first by Plautus[4] as early as the Second Punic war, and a generation later by Terence,[5] its symptoms were unmistakably described by Cato,[6] who warned prospective purchasers against buying land in these unhealthy districts.[7] Varro regarded such a purchase as suicidal to the purchaser. "On the unhealthy farm," he said, "however fertile it may be, misfortune does not allow the colonus to make a profit. For when the struggle is with Death, then not only is the profit uncertain, but the very existence of the cultivators as well; and where the land is insalubrious, agriculture becomes nothing less than a gamble of both the life and fortune of the farmer."[8] If a

[1] Varro, *R. R.*, i, 12, 2. "Loca palustra ... crescunt *animalia* quaedam *minuta* quae ... efficiunt difficiles morbos." Colum., *De R. R.*, i, 5. "Nec paludem quidem vicinam esse oportet aedificiis, quod ... *infestis aculeis armata* gignit *animalia*, quae in nos densisimis examinibus involant ... ex quibus saepe contrahuntur caeci morti quorum causas ne medici quidem perspicere queunt."

[2] Dureau de la Malle, *op. cit.*, vol. ii, p. 48; Wallon, *op. cit.*, vol. ii, p. 358.

[3] *Cf.* Simkhovitch, *op. cit.*, p. 226; Huntington, "Climatic Change and Agricultural Exhaustion as Elements in the Fall of Rome," *Quart. Jour. of Eco.*, xxi (1917), pp. 202-204.

[4] *Curculio*, i, 1, 17.

[5] *Hecyrae*, iii, 2, 22.

[6] *De Agric.*, clvii, 7. "Si bilis atra est et si lienes turgent et si cor dolet et si iecur aut pulmones aut praecordia ... dolitabunt" etc. *Cf.* A Virginia Farmer, *Roman Farm Management*, p. 95.

[7] Cato, *op. cit.*, i, 2 and 3; *cf.*, xiv, 5; cxli, 2.

[8] *R. R.*, i, 4, 3. "In pestilenti calamitas, quamvis in feraci agro, colonum ad fructus pervenire non patitur. Etenim ubi ratio cum Orco habetur, ibi non modo fructus est incertus, sed etiam colentium vita. Quare ubi salubritas non est, cultura non aliud est atque alea domini vitae ac rei familiaris." *Cf. ibid.*, i, 2, 8; i, 4, 4-5.

man should inherit an unhealthy farm he should sell it if he can, and if he cannot, he should give it up anyway.[1] Likewise Columella stated that on insalubrious land no matter how fertile or productive, death was more certain than profits.[2] So thus desertion of the soil led to pestilential swamps, which in turn resulted in more deserted land and more swamps, and so on in a never-ending circle. In early days the lands of the Volscians had been among the most fertile in Italy and had supported twenty-four flourishing cities.[3] But by the time of Pliny no trace of this early prosperity was visible, for the great Pontine marshes covered the land. Apulia was deserted,[4] Tarentum and Antium were abandoned and attempts to recolonize them soon failed,[5] while the cities of Picentia had decayed and become mere villages.[6] The historian Livy could well wonder how these barren and deserted regions could once have been populated by "an innumerable multitude of freemen which at the present day Roman slaves save from being a desert, a scanty seminary of soldiers being scarcely left".[7] Cam-

[1] *Ibid.*, i, 12, 2. "Fundanius, 'Quid potero', inquit, 'facere, si istius modi mi fundus hereditati obvenerit, quo minus pestilentia noceat?' 'Istuc vel ego possum respondere,' inquit Agrius, 'vendas, quot assibus possis, aut si nequeas relinquas.'" *Cf.* Cic., *C. Rull.*, ii, 26; 36; *De Repub.*, ii, 6.

[2] *Re R. R.*, i, 3. "Nec rursus pestilenti quamvis feracissimo pinguique agro dominum ad fructus pervenire. Nam ubi sit cum Orco ratio ponenda, ibi non modo perceptionem fructuum, sed et vitam colonorum esse dubiam, vel potius mortem quaestu certiorem."

[3] Plin., *N. H.*, iii, 5.

[4] Senec., *Epist.*, lxxxvii, 7, "in desertis Apuliae."

[5] Tac., *Ann.*, xiv, 27.

[6] Strabo, v, 4, 13.

[7] Liv., vi, 12. Mihi ... miraculo fuit ... innumerabilem multitudinem liberorum capitum in eis fuisse locis, quae nunc vix seminario exiguo militum relicto servitia Romana ab solitudine vindicant." *Cf.* Simkhovitch, *op. cit.*, p. 230.

pania, however, in the first century, still remained the garden spot of Italy and Pliny could describe it as a land "so fortunate and so blest with natural beauties that it is evident that when nature formed it she took delight in accumulating all her blessings in a single spot." [1] Yet in 295 A. D. in this same "felix Campania" there were 528,042 *jugera* of *agri deserti*.[2]

The concentration of the landed property into *latifundia* and the disappearance of the small farmer had not been perceived without alarm by the more far-sighted of the Roman statesmen. According to the accounts of Livy and Dionysius, from the time of Spurius Cassius and Appius Claudius in the early part of the fifth century B. C. attempts had been made to limit the holdings of the rich and distribute the surplus among the poor.[3] But these earlier agrarian measures met with little success and usually resulted in the death of the leader of the movement. Finally, however, after a long and bitter struggle, a law was passed which limited the amount of the *ager publicus* which anyone might hold to five hundred *jugera,* declared that no one might pasture more than five hundred sheep or one hundred cattle on government land, and required the employment of a certain number of freemen on every estate.[4] But this law was soon disregarded. Within ten years Caius Licinius Stolo, the reputed author of the measure, is said to have been prosecuted for possessing more than five hundred *jugera* of

[1] Plin., *N. H.*, iii, 5. "Companiae ora ... per se felix illa ac beata amoenitas, ut palam sit uno in loco gaudentis opus esse naturae."

[2] *Cod. Theod.*, xi, 28, 2.

[3] *Liv.*, ii, 41; Dionys., *Antiq.*, viii, 73; ix, 59.

[4] Liv., vi, 35; Appian, *Bel. Civ.*, i, 8. Whether the so-called Licinian Law was passed in 367 B. C., as Livy related, or much later, as some modern historians believe, (*cf.* Niese, "Das sogenannte Licinisch-Sextische Ackergesetz," *Hermes,* xxiii, 1888, pp. 410-423.) is unimportant for the purpose of this monograph.

the *ager publicus*.[1] "Those who held possession of lands under the law," said Appian, "were required to take an oath to obey the law and penalties were fixed for violating it, and it was supposed that the remaining land would soon be divided among the poor in small parcels. But there was not the smallest consideration shown for the law or the oaths. The few who seemed to show some respect to them conveyed their lands to their relations fraudulently, but the greater part disregarded it altogether."[2] In the third century B. C. the law was sporadically enforced and fines were occasionally levied on those whose possessions in the *ager publicus* exceeded the legal maximum.[3] But by the time of the Gracchi it had become a dead letter.[4]

The famous Gracchan reforms had important political consequences in that they ushered in the era of civil war which led to the overthrow of the Republic; but they wholly failed in effecting any permanent agrarian relief. The law of Tiberius of 133 B. C. renewed the old limitation to five hundred *jugera* and provided for a commission of three to distribute the surplus to the poor citizens in inalienable leaseholds of thirty *jugera* for which they were required to pay a moderate rent to the state.[5] From the increase in the census from 318,823 in 131 B. C.[6] to 394,736 in 125 B. C.[7] it is usually held that about 76,000 settlers were accommodated.[8] But after the death of Caius Gracchus the reac-

[1] Liv., vii, 16.

[2] Appian, *Bel. Civ.*, i, 8. Trans. by White.

[3] Liv., x, 13; 23; 47.

[4] Plutarch, *Tib. Gracch.*, 8.

[5] Appian, *Bel. Civ.*, i, 9-10; Bruns, *Fontes*, i, 3, 11, line 14; Plutarch, *C. Gracch.*, 9.

[6] Liv., *Epit.*, lix.

[7] *Ibid.*, lx.

[8] *Cf.*, Mommsen, *op. cit.*, vol. iii, p. 335; Greenidge, *op. cit.*, vol. i, p. 150.

tionary party came into power and proceeded to render the Gracchan legislation ineffective. The Gracchan colonists were allowed to sell their lands, which had been forbidden by the law of Tiberius; the land commission was abolished; all possessors of the *ager publicus* were given full proprietorship of the land; and the *vectigal,* which had only been collected with indifferent success in the past, was abolished.[1] So thus most of the former *ager publicus* became in law as well as in practice the private property of the rich; and the threat of agrarian laws which had hung like a sword of Damocles over the possessions of the rich in the public domain was removed forever.[2] The last distribution of the *ager publicus* was made by Caesar in 59 B. C. Caesar's law, however, merely concerned the settlement of 20,000 colonists on the small tract of the public domain which still remained in Campania,[3] and, as in the case of the lands settled by the Gracchan colonists,[4] these lands were soon deserted or sold and the private *latifundia* absorbed the last vestiges of the *ager publicus* in Italy.[5]

So thus the efforts of land reformers and the agrarian laws had proved totally ineffective. The small farm which might have maintained Italian agriculture in a healthy condition disappeared and could not be reconstituted. Concentration of landed property continued. The tribune Marcius Philippus is reported to have said in 103 B. C. that there were not two thousand citizens in the state who possessed

[1] Appian, *Bel. Civ.*, i, 27; Cic., *Brut.*, 136; *Lex Agraria* of 111 B. C., lines 7-8, 19, in Hardy, *Six Roman Laws* (Oxford, 1911).

[2] Laboulaye, *Histoire du droit de propriété* (Paris, 1839), p. 73. *Cf.* Liv., vi, 11. "Agrariis legibus, quae materia semper tribunis plebi seditionum fuisset."

[3] Appian, *Bel. Civ.*, ii, 10; Suet., *Jul.*, 20.

[4] Appian, *Bel. Civ.*, i, 27.

[5] Cic., *C. Rull.*, ii, 82.

property.[1] "All the money of all the nations has come into the hands of a few men," said Cicero.[2] So great were some of the *latifundia* that according to Columella the proprietors could not make the circuit of their estates on horseback in a day.[3] And this development which appeared to contemporaries as an incurable evil in Italy[4] with the Empire extended to the provinces. "The *latifundia* have ruined Italy," said Pliny, "and now they are ruining the provinces. Six landlords possessed half of Africa when the Emperor Nero had them executed."[5]

Agrarian laws had not been any more successful in checking the growth of slavery than in preventing the concentration of landed property. But whereas the *latifundia* continued until the end of the Empire the *Sclavenwirtschaft* commenced to decay before the end of the Republic. Slavery had proved ruinous to agriculture and in many parts of Italy, especially in the South, it had given way to pasturage. But the discipline which could be maintained by the *ergastula* and the chain gang on the plantation was sadly lacking on the great cattle and sheep ranches. Slave herdsmen, frequently the half-savage remnants of barbarian tribes conquered by the Romans,[6] roamed the great pasturelands of

[1] Cic., *De Offic.*, ii, 73. "Non esse in civitate duo milia hominum, qui rem haberet."

[2] *In Verr.*, ii, 5, 126. "...ad paucos homines omnium nationum pecunias pervenisse."

[3] Colum., *De. R. R.*, i, 3. "...praepotentium, qui possident fines gentium, quos ne circumire equis quidem valent." *Cf.* Hyginus, *De Cond. Agr.*, (Ed. Lachmann) p. 115.

[4] Tac., *Ann.*, iii, 53-54; Senec., *De Benef.*, vii, 10; *Epist.*, 89.

[5] Plin., *N. H.*, xviii, 7. "Latifundia perdidere Italiam iam vero et provincias. Sex domini semissem Africae possidebant, cum interfecit eos Nero princeps." *Cf.* Florus, ii, 7, (iii, 19) 3. "(Sicilia) terra...latifundiis civium Romanorum tenebatur."

[6] Caes., *Bel. Gal.*, i, 40.

southern Italy and Sicily, making life unsafe for the traveler or for the dwellers in unprotected homesteads and small villages.[1] From the time of the Second Punic War slave revolts were common.[2] The terrible slave wars in Sicily at the end of the second century B. C.[3] fought with desperate ferocity by the slaves and punished with merciless severity by the masters showed the Romans the danger which threatened Italy. At length in 73 B. C. the great servile revolt of Spartacus broke forth.[4] For three years Rome was held in terror. Six Roman armies were defeated by the insurgent slaves under their valiant leader and at one time Spartacus marched on Rome itself at the head of 120,000 slaves. Finally, however, the slave army was defeated by Crassus. Most of the slaves were butchered in battle, while the prisoners were crucified, the crosses forming a continuous line from Capua to Rome.[5]

The revolt of Spartacus forcefully called to the attention of the Romans the disadvantages of an agricultural system based on slavery. The slaughter of huge numbers of slaves created the first shortage of servile man-power which Italy had ever experienced,[6] while the internecine character of the war made the Roman proprietors realize that the old Latin proverb *quot servi, tot hostes* was full of dreaded reality.[7] Agricultural writers were already declaiming against cultivation by means of chained gangs of slaves, while pasturage by slave herdsmen had proved itself to be a constant menace

[1] Diodor., xxxiv, 2; Valer. Max., ii, 10, 2.

[2] Liv., xxxii, 26; xxxiii, 36; xxxiv, 29.

[3] Diodor., xxxiv, 2; xxxvi, 1-11. Appian, *Bel. Civ.*, i, 9. *Cf.* Wallon, *op. cit.*, vol. ii, pp. 299-317.

[4] Appian, *Bel. Civ.*, i, 116-120.

[5] *Ibid.*, i, 120.

[6] *Cf.* Davis, *op. cit.*, p. 241.

[7] *Cf.* Wallon, *op. cit.*, ii, 39; Frank, *op. cit.*, p. 293-294.

to the safety of the community. Both methods of utilizing slave labor were dependent on continual fresh supplies of war captives, for the death rate among slaves was very high, especially with the Northern barbarians, and the birth rate very low. Although Caesar's conquests brought in enormous new hordes of slaves, the diminution of foreign conquests and the repression of piracy which came with the Empire seriously cut down the available supply. Consequently we find that the proprietors of the great estates in many districts ceased to depend solely on slave labor for the exploitation of their domains and gradually returned to the older system of cultivating their lands by means of small tenants or coloni.

Probably even during the period of the greatest development of the slave-worked *latifundia* the small tenantry continued to exist in remote districts and in mountain valleys like Horace's Sabine farm.[1] Terence, in the second century B. C. at the very heyday of slavery, mentioned the custom which proprietors had of dwelling in the city and renting out their land to tenants.[2] Cincius, a century later, said that the ninth month of the year was called *Mercedonius* because tenants paid their rent (*merces*) in that month.[3] The etymology may not be correct, but the attempted explanation shows that the payment of rent in that month was an old custom and that the small tenantry must have been an appreciable element in the population during the whole period of the great extension of slavery.[4] Campania, also, seems

[1] Hor., *Epist.*, i, 14, 1-3. *Cf.* Festus, *verb. Saltus.*

[2] Terent., *Adelph.*, v, 8, line 953. "Agelli est hic urbe paulum, quod locitas foras.

[3] Cincius, *De Fastis*, 5, in Huschke, *Iurisprud. Anteiust. Reliq.*, 6th Ed., pp. 25-26.

[4] *Cf.* Fustel de Coulanges, *Recherches sur quelques problèmes d'histoire*, p. 11.

never to have been absorbed by the great slave-worked *latifundia,* but instead to have been divided into small farms and leaseholds, for Cicero said that the whole Campanian land was cultivated and possessed by the plebeians.[1]

Beginning, however, with the closing years of the Republic the references to coloni became very much more numerous.[2] During the civil wars the coloni of the nobles formed by no means an inconsiderable element in their following. Catiline's coloni as well as his freedmen followed him in his special body-guard.[3] Domitius Ahenobarbus in the war between Caesar and Pompey manned seven vessels with his coloni, freedmen, and slaves in April 49 B. C.[4] and in July of the same year fitted out several more vessels with coloni and slave herdsmen.[5] Pompey, himself, collected an army from the Picenian farms, which were entirely occupied by his father's clients.[6] In the time of Cicero municipalities might lease all their domains to coloni and support themselves completely by the rents thus obtained.[7] Cicero frequently mentioned coloni in his writ-

[1] Cic., *C. Rull.,* ii, 84. "Totus enim ager Campanus colitur et possidetur a plebe, et a plebe optima et modestissima." *Cf. ibid.,* ii, 88.

[2] Bolkestein (*De Colonatu Romano,* pp. 96-110) has assembled nearly 150 texts referring to coloni and free agricultural labor during the period of the late Republic and the early Empire.

[3] Sall., *Catil.,* lix. "...cum libertis et *colonis* propter aquilam absistit."

[4] Caes., *Bel. Civ.,* i, 34. "...profectum item Domitium ad occupandam Massiliam navibus actuariis septem, quas...servis, libertis, *colonis* suis compleverat."

[5] *Ibid.,* i, 56. "Certas sibi deposcit naves Domitius atque has *colonis* pastoribusque quos secum adduxerat complet."

[6] Vell. Paterc., ii, 29. "Pompejus...ex agro Piceno, qui totus paternis ejus clientelis refertus erat, contraxit exercitum."

[7] Cic., *Ad. Fam.,* xiii, 11. "Quorum quidem omnia commoda omnesque facultates...consistunt in iis vectigalibus, quae habent in provincia Gallia. Ad ea visenda pecuniasque, quae a *colonis* debentur, exigendas ...legatos equites Romanos misimus." *Cf.* Hyginus, *De Cond. Agr.,* p. 117. (Ed. Lachmann.)

ings,[1] and it is not at all unlikely, as Heitland contends, that Cicero's own estates were leased in *praediola* to tenant farmers.[2] Cato's *De Agricultura* had been based altogether on slave labor and looked askance upon any other kind of culture.[3] A century later the treatise of Varro was still principally intended for proprietors of slave-worked *latifundia,* but he occasionally mentioned cultivation by coloni and the regulation of their leases (*leges colonicas*).[4] By the time of Columella, however, the tenant-farming system had become so common that Columella devoted a chapter to it. For lands which were still fertile and close enough to the capital to be constantly under the master's eye he still favored slave-culture; but for all other lands he regarded coloni as preferable.[5] Vergil's *Georgics* referred to the agriculture of a free peasantry, not of a slave estate.[6] Seneca, decrying the enormous possessions which a few individuals owned, said that thousands of coloni plow and dig and sow in Sicily and Africa in order that one man's stomach might be satisfied.[7] The younger Pliny's estates were cultivated by coloni; he had no chained slaves.[8] While by the time of the writers of the Digest not only was the tenant-farming

[1] *Cf. Pro Cluent.*, 175; 182; *Pro Caec.*, 94; *In Verr.*, ii, 3, 55; 228; *Pro Plancio*, 26.

[2] Cic., *Ad Att.*, xiii, 9. "Mihi Arpinum eundem est. Nam ... opus est constitui a nobis illa praediola." *Cf.* Heitland, *op. cit.*, p. 194, note 3.

[3] Cato, *De Agric.*, v, 4. "Operarium, mercennarium, politorem diutius eundem ne habeat die." *Cf.* Oliver, *Roman Economic Conditions*, p. 73.

[4] Varro, *R. R.*, i, 2, 17; *cf.* ii, 3, 7.

[5] Colum., *De R. R.*, i, 7.

[6] Heitland, *op. cit.*, p. 218.

[7] *Epist.*, cxiv, 26. "Adspice quot locis vertatur terra, quot *millia colonorum* arent fodiant: unum videri putas ventrem, cui et in Sicilia et in Africa seritur?"

[8] Plin., *Epist.*, iii, 19; ix, 37; x, 24.

system customary everywhere but the slaves themselves were with increasing frequency given a holding of their own and treated as "*quasi coloni*".[1]

[1] *Dig.*, xxxiii, 7, 12, 3. "Servus qui quasi colonus in agro erat." *Cf. ibid.*, xxxiii, 7, 18, 4; xxxiii, 7, 20, 1.

CHAPTER IX

The Adscription to the Soil

The most complete description of the condition of the Italian colonus of the early Empire is to be found in the writings of the great jurists. The colonus leased his land under a formal contract, known by the double word *locatio-conductio,* which was as binding to the lessor (*locator*) as to the lessee (*conductor*).[1] If either party of the contract violated his agreement the other could appeal to law for its enforcement.[2] The duration of the lease was the period of the lustrum or five years.[3] At the end of that period the colonus might leave or renew the contract, just as he wished.[4] A formal renewal was not necessary, for if the colonus continued to cultivate the land it was considered a tacit *reconductio.*[5] His rent was a fixed amount payable usually in money.[6] Fustel de Coulanges maintained that

[1] In the Digest the tenant-farmer is designated both by the words *conductor* and *colonus,* the former word denoting his legal relation to the proprietor and the latter his function as a cultivator. For detailed references see Heitland, *Agricola,* p. 364, note 5, and Fustel de Coulanges, *Recherches,* p. 12, note 3.

[2] Gaius, *Instit.,* iii, 135. "Consensu fiunt obligationes in . . . locationibus conductionibus." *Ibid.,* iii, 137. "Item in his contractibus alter alteri obligatur de eo, quod alterum alteri ex bono et aequo praestare oportet." *Cf. Dig.,* xiv, 2, 9.

[3] *Dig.,* xix, 2, 9, 1; 24, 2, "locare in quinquennium." *Ibid.,* xix, 2, 13, 11, "post finitum lustrum." *Ibid.,* xlix, 14, 3, 6, "peracto lustro."

[4] *Dig.,* xix, 2, 14; xix, 2, 13, 11.

[5] *Dig.* xix, 2, 13, 11; xix, 2, 14.

[6] *Dig.,* xix, 2, 25, 6. "... colono ... qui ad pecuniam numeratam conduxit;" *ibid.,* xlvii, 2, 26. "... colonum qui nummis colat." *Cf. ibid.,* xix, 2, 21; 51; 52; 61; xvii, 1, 1, 4; xxxix, 5, 6.

only leases which involved a money rent were included in the legal contract of *locatio-conductio,* basing his opinion principally on a decision of Gaius. "Unless a certain money rent is agreed upon," said Gaius in his *Institutes,* "the contract of *locatio-conductio* does not exist." [1] But Gaius in another place speaks of the *partiarius colonus,*[2] and all writers since Fustel de Coulanges have agreed that the share-rent lease constituted just as much of a legal contract as a lease requiring a money payment.[3] Yet, as the share rent contract is only mentioned once in the Digest while the lease for money rent is mentioned frequently, it is evident that the latter was more common in Italy during the early Empire.

Many disputes naturally arose between the landlords and their tenants; and the decisions which the jurists handed down in regard to these mooted points constitute a whole title of the Digest, in which the rights and obligations of the landlords and their tenants are clearly defined. The most important obligation of the tenant was the proper cultivation of the soil. "Before all," said Gaius, "the colonus ought to see that all types of farm work are done each at its proper time, so that cultivation out of season may not cause the estate to deteriorate." [4] "If a colonus abandons the cultivation of the estate," said Paulus, "the landlord can immediately sue him in the courts." [5] If he

[1] Gaius, *Instit.*, iii, 142. "Locatio et conductio... nisi merces certa statuta sit non videtur contrahi." *Cf.* Fustel de Coulanges, *op. cit.*, pp. 12-13.

[2] *Dig.*, xix, 2, 25, 6. "Alioquin partiarius colonus, quasi societatis jure, et damnum et lucrum cum domino fundi partitur."

[3] *Cf. supra,* p. 161.

[4] *Dig.*, xix, 2, 25, 3. "Ante omnia colonus curare debet ut opera rustica suo quoque tempore faciat, ne intempestiva cultura deteriorem fundum faceret."

[5] *Dig.*, xix, 2, 24, 2. "Potest dominus si deserueret... fundi culturam colonus cum eo statim agere."

does not pay his rent he may be expelled, Paulus stated in another decision.[1] The coloni were compelled to offer security of various kinds when they leased a farm, and this was forfeited in case they did not pay the rent or let the farm run down.[2]

On the other hand, the tenant was protected against any disturbance of his lease, and, if he was not permitted to cultivate the land during the whole period of his lease, he could sue the landlord for damages.[3] In case of flood, earthquake, or the incursion of enemies the tenant received a total remission of rent, but the landlord was not responsible for losses due to unfavorable weather.[4] If the tenant made any permanent improvements on the estate he could indemnify himself for these out of his rent.[5] He had the right to sublet his tenement,[6] and in case of any legal procedure with the landlord his oath was as valid as that of the prietor.[7] Another evidence of the independent position of the colonus was his freedom to renew the lease or not at his pleasure. "There is no doubt," said Gaius, "that a colonus or *inquilinus* is permitted to relinquish his lease." [8] "It is easier to find tenants," said the Emperor Hadrian in a rescript, "if they know that they will not be retained if they wish to leave at the end of the *lustrum*." [9]

Thus the colonus of the Digest is seen to be markedly

[1] *Dig.*, xix, 2, 54, 1.

[2] *Dig.*, xx, 6, 15; xx, 1, 21, *pr.*

[3] *Dig.*, xix, 2, 24, 4. *Cf. ibid.*, xix, 2, 15, 8; 25, 1.

[4] *Dig.*, xix, 2, 25, 6; 15, 2.

[5] *Dig.*, xix, 2, 55, 1; 61, *pr.*

[6] *Dig.*, xix, 2, 24, 1; xli, 2, 30, 6.

[7] *Dig.*, xii, 2, 28, 6.

[8] *Dig.*, xix, 2, 25, 2. "Quin liceat colono vel inquilino relinquere conductionem nulla dubitatio est."

[9] *Dig.*, xlix, 14, 3, 6. "Nam et facilius invenientur conductores, si scierint fore, ut si peracto lustro discedere voluerint, non teneantur."

different from the colonus of the Codes. The earlier colonus held a short-term lease while the later colonus was a perpetual tenant; the former, in Italy at least, ordinarily paid a money rent while the latter owed as rent payments in kind and services; and most important of all, the colonus of the Digest was perfectly free to leave his tenement at the expiration of his contract while the colonus of the fourth century was bound to the soil in perpetuity. Yet, notwithstanding the fact that the Digest clearly represents the legal status of the colonus as that of a free and independent tenant who entered into a contract with his landlord on terms of equality, the references to coloni which appear in contemporaneous literature make us doubt whether the actual condition of the coloni was as favorable as their legal status would seem to indicate; and there are statements in the Digest itself which are difficult to understand except as relating to a tenantry which was already rapidly approaching a dependent condition.

The passages quoted above,[1] which relate how Catiline and Ahenobarbus enlisted their coloni along with their clients, freedmen, and slaves as their personal following in the civil wars, are very significant. The coloni here appear as personal dependants of the landlord. Many of them no doubt were freedmen themselves or the descendants of freedmen. The scanty information on rural affairs which has come down to us is altogether silent in regard to the freeing of agricultural slaves; yet the manumission of diligent members of the *familia rustica* must have been very common. In the time of the Republic it had not been customary to emancipate slaves in great numbers, but in the early Empire the manumission of slaves became so frequent that it had to be checked by the imperial authority, for the emperors did not wish to see the Roman body politic

[1] *Cf. supra*, p. 259.

demoralized by an enormous influx of new citizens.[1] But at the same time measures were passed which permitted informal manumission under the terms of which the slaves became freedmen of inferior grade. Augustus introduced the *lex Aelia Sentia* in 5 A. D. which formed a class of freedmen called *dedititii* who had the same rights and privileges as the *dedititii* proper, but not those of Roman citizens or Latin confederates.[2] Fourteen years later, by the *lex Junia Norbana* Tiberius created the *Latini Juniani*, who were freedmen possessing the rights of Latins but were were not eligible for Roman citizenship.[3] That manumitted slaves became coloni on the estates of their former masters we have no direct evidence. But we know that freedmen were required to work for their patrons a certain portion of each day;[4] and the kind of work required was that to which the freedmen had been accustomed before their manumission.[5] Likewise we know that the *libertini dedititii* were not urban freedmen for they were not allowed to reside within a radius of one hundred miles of Rome.[6] It does not seem hazardous to conclude, therefore, that just as the urban freedman became the client of his master in the city, so the rural freedmen customarily became a small tenant working on the same estate which he had formerly cultivated as a slave.

It is true that the legal dependence of the freedmen on their patrons was not transmitted to their offspring; but it

[1] *Cf.* Hunter, *Roman Law* (4th Ed., London, 1903), pp. 178-182; Buckland, *The Roman Law of Slavery* (Cambridge, 1908), pp. 537-548.

[2] Gaius, *Instit.*, i, 13.

[3] *Ibid.*, i, 22.

[4] *Dig.*, xxxviii, 1 (*De Operis Libertorum*), 1. "Operae sunt diurnum officium."

[5] *Dig.*, xxxviii, 1, 38.

[6] Gaius, *Instit.*, i, 27.

is very likely that the children of the freedmen tenants continued to cultivate the plots of land formerly leased to their fathers in very much the same condition, so that the extra-legal obligation to follow their landlords to battle was accepted by them as a matter of course. How humble and dependent the coloni were regarded is clearly indicated in a passage in Cicero's oration in defense of Cluentus. Sassia, the mother of Cluentus, in attempting to implicate her son in the poisoning of his stepfather Oppianicus, instituted an investigation to collect evidence. But to membership in this investigating body Cicero charged that "she admitted, I will not say no man, lest you may perhaps say a colonus was present, but no respectable man." [1] Coloni, then, in Cicero's opinion were not *boni viri* and were too much under the control of their landlady to be capable of independent testimony.

Whatever the condition of the colonus at the beginning of the Empire may have been it is certain that it did not improve in the course of time. Debt was very common among the coloni and in many regions coloni became habitual debtor tenants. Cultivation of the soil by debtors was by no means a new situation in Italy. In early days many of the agricultural slaves were poor peasants who had lost their liberty on account of their debts.[2] Slavery for debt was eventually abolished but cultivation by debtor tenants continued to be very common. Varro in enumerating the classes of agricultural labor said that besides the slaves, the peasant proprietors, and the day laborers there was an additional class of men "whom our rustics call *obaerati*".[3]

[1] Cic., *Pro Cluent.*, 182. "Nullo adhibito non dicam viro, ne colonum forte adfuisse dicatis, sed bono viro."

[2] Liv., ii, 23; vi, 14. Dionys., *Antiq.*, vi, 26.

[3] Varro, *R. R.*, i, 17, 2. "Omnes agri coluntur hominibus servis aut liberis aut utrisque. Liberis, aut cum ipsi colunt, . . aut mercenariis . . . iique quos obaeratos nostri vocitarunt."

Columella likewise mentioned debtor tenants along with slaves as the cultivators of the *latifundia*.[1] Wallon believed that Martial also was referring to the same situation when he coined the epigram, "Heirs, do not bury the poor colonus; for earth, however little it is, rests heavily upon him".[2]

These vague references become considerably more significant when seen in the light of the clear evidence which the letters of the younger Pliny present. Pliny employed no manacled slaves on his estates[3] but cultivated his lands by means of coloni holding five-year leases and paying money rent. In two of his letters he complained that his tenants were unable to pay their rent and that he had been forced to make abatements.[4] But notwithstanding these abatements the arrears increased, and in addition he found that his tenants once hopelessly in debt made no effort to reduce their obligations. "They even seize and consume all the produce of the land," he wrote to his friend Paulinus, "as men who now believe they should not stint themselves."[5]

The situation set forth in these letters of Pliny was by no means confined to the estates of Pliny himself. In another letter Pliny described conditions on a neighbor's estate which were even worse than on his own.[6] The neighboring landlord, instead of granting abatements in the rent as Pliny

[1] Colum., *De R. R.*, i, 3. "...occupatos nexu civium et ergastulis tenent."

[2] Martial, *Ep.*, xi, 14.

Haeredes nolite brevem sepelire colonum:
Nam terra est illi, quantulacumque, gravis."

Cf. Wallon, *L'Esclavage dans l'antiquité*, vol. ii, p. 378.

[3] *Epist.*, iii, 19. "...nec ipse usquam vinctos habeo."

[4] *Ibid.*, ix, 37, "post magnas remissiones." x, 8. · "Continuae sterilitates cogunt me de remissionibus cogitare."

[5] *Ibid.*, ix, 37. "Rapiunt etiam consumuntque, quod natum est, ut qui iam putent se non sibi parcere."

[6] *Epist.*, iii, 19.

had done, seized and sold the stock of the tenants which they had pledged as security for their rent. But this policy, while it lessened the arrears of the coloni for the time being, proved to be short-sighted and disastrous in the long run, for without their former equipment the coloni were less able than before to pay their rent and their arrears mounted more rapidly than ever.[1] As a result of this "imbecile" measure and "the general hard times" the estate which had formerly been valued at five million sesterces was now offered for sale for three millions.[2]

But it is in the Digest where the references to the indebtedness of the coloni are the most frequent. The Emperor Antoninus Pius issued several rescripts against granting remission of rent too easily, merely because the tenants complained of a small crop (*de fructuum exiguitate*) or that their grape vines were old (*propter vestustatem vinearum*).[3] But in case of an unfruitful year (*ob sterilitatem*) there was nothing to do but to allow the tenant an abatement and hope to receive the delinquent rent in succeeding years.[4] That the chance of recovering the back rent was an extremely meager one is seen from the constant references to the arrears of the coloni which appear in the Digest. In fact these debts became so general and of such long standing that the phrase *cum reliquis colonorum* was customarily included in the bequest of a landlord's estate.[5] Interest was

[1] *Ibid.*, "Sed haec felicitas terrae imbecillis cultoribus fatigatur. Nam possessor prior saepius vendidit pignora et, dum reliqua colonorum minuit ad tempus, vires in posterum exhausit, quarum defectione rursus reliqua creverunt."

[2] *Ibid.*, "Superest, ut scias, quanti videantur posse emi. Sestertio tricies, non quia non aliquando quinquagies fuerint, verum et hac paenuria colonorum et communi temporis iniquitate ut reditus agrorum sic etiam pretium retro abiit."

[3] *Dig.*, xix, 2, 15, 5.

[4] *Dig.*, xix, 2, 15, 4.

[5] E. g., *Dig.*, xxxiii, 7, 20, *pr.* "Codicillis ita scripsit: Postea mihi

due on these back debts, which made the payment of them still more difficult for the tenant.[1]

Why was the colonus so likely to fall in debt? Seeck discussed this question and came to the conclusion that it was due to the poor quality of the tenants.[2] With the small farmer class destroyed by the concentration of property into *latifundia,* and the slave supply failing, the only source from which agricultural labor could be obtained was, according to Seeck, the "dregs of the city proletariat", who were more competent "to exercise their hands in the theatre and the circus, than in the wheat field and the vineyard".[3] These coloni, as was to be expected, proved very lazy and inefficient. The poor material of the tenantry Seeck believed made necessary the laws which are mentioned in the Digest in regard to the expulsion of the coloni before the expiration of their leases;[4] and it was the same lack of energy and application and the care-free disposition of the city rabble which made debt almost inevitable.[5]

To what extent the landlords were able to recruit their coloni from the capital must remain a matter of conjecture, for our sources are altogether silent on this point. But, judging from the celerity with which veterans deserted lands[6] which were granted to them in full ownership and

venit in mentem, Seiae fundos quos reliqui, ita ut sunt instructi rustico instrumento, suppellectile, pecore, et vilicis, *cum reliquis colonorum,* et apotheca, habere volo.'" *Cf. ibid.,* xxxii, 78, 3; 91; 97; 101, 1; xxxiii, 2, 32, 7; 7, 20, 3; 27, *pr.*; 27, 1; 27, 2; xxxiv, 3, 17.

[1] *Dig.,* xix, 2, 54, *pr.*

[2] Seeck, Art. "Colonatus" in Pauly-Wissowa, *Real Encyk.,* vol. iv, pp. 487-489.

[3] Varro, *R. R.,* ii, *pr.,* 3. "Manus movere ... in theatro ac circo, quam in segetibus ac vinetis."

[4] *Dig.,* xix, 2, 54, 1.

[5] Seeck, *op. cit.,* p. 488.

[6] *Cf. supra,* p. 248.

not as leaseholds, it seems unlikely that any considerable part of the tenantry of the early Empire could have been obtained from the city rabble. They loved the excitement and the amusements of Rome too well to give them up for the "thankless labor" of the fields, which caused even farm-bred boys to desert their homes.[1] What emigration from the city there was probably came early when the *latifundia* were first changing from slave culture to a small tenant system. By the first and second centuries slavery had given place in many districts to a free peasantry born and bred on the farm. Yet this is just the period when the references to debt are most numerous. Pliny said that it was a growing evil in his day[2] and the decisions of the jurists during the second and third centuries constantly refer to it.

Let us examine the explanation offered by Pliny and the Digest as to the origin of the debts of the coloni. "The *continuous unfruitfulness* of the soil compels me to consider abatements of rent", said Pliny in a letter to the Emperor Trajan.[3] Likewise it was the "universal hard times" (*communi temporis iniquitate*) and the "poverty of the coloni" (*paenuria colonorum*) which Pliny regarded as the cause of the fall in value of an estate of one of his neighbors from five million sesterces to three millions.[4] Similarly in the Digest proprietors were warned by the jurists not to grant remission of the rents for trivial excuses, but if the reason was "*unfruitfulness*" (*ob sterilitatem*)[5] the abatement must of necessity be granted. The scanty yield of the Ital-

[1] *Cf. supra*, p. 248. *Cf.* the interpretation of Horace, *Epist.*, i, 7, in Heitland, *Agricola*, p. 234.

[2] *Epist.*, ix, 37. "Occurrendum ergo augescentibus vitiis et medendum est."

[3] *Epist.*, x, 8. "Continuae sterilitates cogunt me de remissionibus cogitare."

[4] *Cf. supra*, p. 269.

[5] *Dig.*, xix, 2, 15, 4.

ian fields which had brought about the wholesale desertion of many agricultural districts during the Republic remained as a continual source of anxiety to the patriotic Romans of the early Empire. In fact we learn from Columella that the prevailing view of the time was that the land was completely exhausted.[1] Not only was exhaustion of the soil the popular explanation of agricultural distress in the first century but men who were regarded as authoritative agricultural writers, such as Tremellius, whom Columella held in especially high esteem, believed that the Italian fields were completely worn out and sterile.[2] It was largely to combat this hopeless attitude toward farming which induced Columella to write his treatise on husbandry. He refused to admit that the land had completely lost its fertility but felt that by more careful cultivation and especially by using more manure much of the ancient fruitfulness of the Italian soil might be restored.[3] But debtor tenants were the last persons in the world to be able to profit by the advice of Columella, excellent though it was. To restore the fertility of exhausted soil requires capital and time. Debtor tenants had neither. As soon as their arrears with the accrued interest reached a sum which it appeared impossible for them to pay, the majority, like the tenants of Pliny, "seized and consumed all the produce of the land as men who now believed they should not stint themselves."[4]

The consequences of the indebtedness of the coloni were

[1] Colum., *De R. R.*, i, *pr.*

[2] *Ibid.*, ii, 1; *cf.* Simkhovitch, *Pol. Sci. Quart.*, xxxi (1916), pp. 209-211.

[3] Colum., *De R. R.*, ii, 1. Tacitus likewise refused to admit that the Italian soil has become barren. He lamented over the fact that Italy could no longer provision her legions as in the past but laid the blame of scanty crops to the wrath of heaven, and the dependence on African and Egyptian grain to the perversity and shiftlessness of a stiff-necked generation. *Cf.* Tac., *Ann.*, xii, 43; iii, 54.

[4] Plin., *Epist.*, ix, 37. *Cf. supra*, p. 268.

very important in the future development of tenancy. It is certain that a condition such as that which existed on Pliny's estates was neither profitable to the tenants nor to the proprietor. Pliny was a gentleman and a man of letters and not a hard-fisted dirt farmer like Cato, yet he was not a little concerned over the luckless plight of his tenants. He finally decided that the best way to meet the situation was to make a radical change in the form of his rent. So he entered into agreements with his coloni to receive their rent in shares rather than in money.[1] "There is no juster form of rent," he said, "than that which the earth, the climate, and the seasons yield." [2] Since the share of the coloni was directly proportional to the size of the crop, they could be expected to do their best to produce as large a crop as possible; and so far as the landlord was concerned, while the value of his share may have been less than the old money rent, yet at least he was assured of something better than the promissory notes of his tenants. But since share rent afforded much more opportunity to the coloni to defraud the landlord than under the former system when a fixed money rent was required, it was necessary to appoint overseers to see that the coloni did their work honestly and turned over the agreed share of the harvest to the proprietor. For this work of supervision Pliny employed certain of his slaves. "It is a work," he said, "which requires great honesty, sharp eyes, and many hands. But the experiment ought to be made and, just as in an old disease, the remedy of a change of some sort ought to be tried." [3]

[1] *Epist.*, ix, 37. "Occurrendum ergo augescentibus vitiis et medendum est. Medendi una ratio si non nummo sed partibus locem."

[2] *Ibid.*, "Nullum iustius genus reditus, quam quod terra, caelum, annus refert."

[3] *Ibid.*, "Ex meis aliquos operis exactores, custodes fructibus ponam... Ad hoc magnam fidem, acres oculos, numerosas manus poscit. Experiundum tamen et, quasi in veteri morbo, quaelibet mutationis auxilia temptanda sunt."

This is the only actual account we have of a change from money rent to rent in shares. Yet such changes must have been very common where the tenants were unable to pay their rent in money. Money rent was universal in Italy at the beginning of the Empire but from the time of Nero we commence to hear of payments in kind, and by the time of Diocletian even taxes were paid in produce. Columella mentioned the requirement to furnish wood and other *parvae accessiones* as customary incidents in the tenure of the coloni of his day.[1] Tacitus, in describing the German slave, said "the lord requires from him a certain quantity of grain, cattle, or cloth just as from a colonus".[2] Evidently, then, in 98 A. D., when Tacitus wrote the *Germania,* the colonus was accustomed to make such payments in kind. Similar payments were likewise mentioned by Martial, whose *Epigrams* were also published in the last decade of the first century. The Pelignian colonus furnished wine,[3] the Umbrian colonus chickens, eggs, figs, goats, olives, and vegetables,[4] and the colonus of Baia honey, cheese, dormice, goats, capons, and osier baskets.[5]

The substitution of payments in kind for money rent was an important step in lowering the status of the colonus. In

[1] *De R. R.*, i, 7. "Lignis et ceteris parvis accessionibus exigendis . . . cui colonum obligaverit."

[2] Tac., *Germ.*, 25. "Frumentum modum dominus aut pecoris aut vestis ut colono iniungit."

[3] *Ep.*, xiii, 121.

[4] *Ep.*, vii, 31.

[5] *Ep.*, iii, 58.

Fert ille ceris cana cum suis mella
Metamque lactis Sassinate de silva;
Somniculosos ille porrigit glires,
Hic vagientem matris hispidae fetum,
Alius coactos non amare capones.
Et dona matrum vimine offerunt texto
Grandes proborum virgines colonorum.

the passage from the *Germania* referred to above Tacitus wrote, "The lord requires from him (his dependent) a certain quantity of grain, cattle, or cloth just as from a colonus; *and he appears as a slave to that extent.*" [1] Just as the commutation of customary services and payments in kind into money rents played a significant part in the emancipation of the medieval villein, so the opposite substitution had an equally important effect in gradually increasing the dependence of the Roman tenantry. The work of the coloni was now supervised by slave *custodes,*[2] and in many ways the coloni were very closely associated with the *familia rustica.*[3] It was the function of the *vilicus* to see that the coloni like the agricultural slaves, were roused early. "For it is of great importance," said Columella, "that the coloni should begin their work as soon as morning begins to dawn and not dally lazily in getting started." [4] They probably were included among the *rustici* who ate at the proprietor's table along with the *familia rustica.*[5] Their tools, livestock, and other equipment were usually furnished by the landlord,[6] while like the medieval serf they were expected to use the bakery and mill of the landlord's villa.[7]

[1] *Germ.*, 25. "Frumenti modum dominus aut pecoris aut vestis ut colono iniungit; *et servus hactenus paret.*"

[2] Plin., *Epist.*, ix, 37. "Ex meis aliquos operis exactores, custodes fructibus ponam."

[3] *Cf. C. I. L.*, ix, 3675. "Atiliae Restut(a)e Alfenus Atticus coniugi b(ene) m(erenti) et *familia* Tironianensis (id est fundi Tironiani) *colon(a)e* b(ene) m(erenti) p(osuit)."

[4] *De R. R.*, xi, 1, 14. "Plurimum enim refert colonos a primo mane opus aggredi, nec lentos per otium pigre procedere."

[5] *Ibid.*, xi, 1, 18. "Consuescatque rusticos circa larem domini, focumque familiarem semper epulari." Possibly this was the case only when they were performing services on the demesne, if Weber's hypothesis is correct. *Cf.* Weber, *Die römische Agrargeschichte*, pp. 244-245.

[6] *Dig.*, xix, 2, 3; xix, 2, 19, 2; xxxiii, 7, 24; *Cf.* xxxiii, 7, 20, 1 and 3; xlvi, 1, 52, 2.

[7] Colum., *De R. R.*, i, 6, 21. "Circa villam deinceps haec esse oportebit: furnum et pistrinum quantum futurus numerus colonorum postulaverit."

Heitland argues with much plausibility that one of the effects of the indebtedness of the coloni was their subjection to a certain specified amount of labor on the home farm.[1] Abatements in rent may have been allowed in return for work on the lord's demesne during the busy seasons. There is no text which specifically refers to such a substitution of *operae* for money payments, yet it is difficult to understand some of the passages just quoted from Columella except as referring to coloni cultivating the lord's demesne under the direction of his *vilicus*. Free day-laborers were rarely mentioned after the time of Varro, and as slaves became scarce the only labor which was available to supply the gaps in the working forces of the villa was that of the tenantry. Coloni were used for that purpose in Africa[2] and it seems to be a reasonable assumption that the same policy was followed on many of the estates in Italy.

Could the tenant who was in arrears leave his tenement at the expiration of his lease? Scaevola answered this question indirectly in a decision in the Digest. "A man bequeathed his estate together with the arrears of his coloni. The question is raised whether the words 'with the arrears of his coloni' of the phrase written above include those who, after their lease had expired and after they had provided *cautio*, had left their holdings. He (Scaevola) answered that the arrears of these coloni were not included in the will."[3] The important point for our purpose in the decision of Scaevola concerns the nature of the *cautio* which

[1] *Agricola*, pp. 256-257.

[2] *Cf. supra*, pp. 139, 143, 148, 174-175.

[3] *Dig.*, xxxiii, 7, 20, 3. "Praedia ut instructa sunt cum ... reliquis colonorum (legavit); quaesitum est an reliqua colonorum qui, finita conductione interposita cautione, de colonia discesserant, ex verbis superascriptis legato cedant. Respondit non videri de his reliquis esse cogitatum."

must be provided before a tenant could leave his holdings. Fustel de Coulanges, taking the ordinary meaning of *cautio* as "bail" or "surety", held that it was necessary for some rich man to offer to guarantee the debt of the colonus before it was possible for him to leave his landlord's estate; and as few men of means would be willing to serve as sponsors for coloni who were hopelessly in debt, the arrears of the coloni, therefore, practically tied them to the soil.[1] However Cuq and other savants in Roman law have shown that *cautio* as a legal term merely meant a kind of promissory note, so that this passage from Scaevola cannot be interpreted to indicate that indebted coloni were bound to the soil by their debts.[2]

We can find no sure trace of any legal attachment to the soil before the legislation of Constantine; yet there undeniably was a tendency toward long and perhaps hereditary tenures. The proprietors usually found it to their advantage to keep the same tenants as long as possible and their children after them. It was no easy matter to find new tenants who would make satisfactory coloni. Pliny obtained a thirty-day leave from his duties as governor of Bithynia for that purpose.[3] Columella advised proprietors against changing tenants frequently, and considered coloni born and bred on an estate and retained throughout their whole lives as the most satisfactory.[4] The transient tenant, caring nothing for the future productivity of the soil, was likely to exploit it for as much immediate profit as the land would yield and after it was exhausted go elsewhere; but

[1] Fustel de Coulanges, *Recherches*, pp. 17-18. *Cf. supra*, p. 153.

[2] *Cf. supra*, p. 162.

[3] Plin., *Epist.*, x, 8 (24).

[4] *De R. R.*, i, 7, 3. "Patrisfamilias felicissimum fundum esse, qui colonos indigenas haberet, et tanquam in paterna possessione natos, jam inde a cunabilis longa familiaritate retineret."

when land was left in the hands of the same family it was cultivated much less wastefully.

Of the means employed by the landlords to keep their coloni on their estates, we have no information. The tenant in debt was in no position to act freely and in all probability *cautiones* were accepted by the proprietor with extreme reluctance, and possibly only when the tenant could be trusted to meet his back payments eventually. One thing which is certain is that the tenants were frequently retained by force on their leaseholds after the expiration of their contracts, for there were many imperial rescripts against the practice.[1] As a rule, however, tenants were probably kept on the same estate by custom and their own interests rather than by force. As time went on the coloni came to feel a strong sense of ownership over tenements which they had held for some years and which possibly their fathers before them had cultivated. They even went so far as to object to the sale of an estate to a new proprietor, and if the new landlord should expel the disaffected coloni from their holdings they could appeal to law against dispossession; and according to the jurists Marcellus and Papinian, the law supported the coloni in their rights to continued possession of their tenements even against the will of the landlord.[2]

Whether the coloni ever held perpetual leases before the legislation of the fourth century we cannot say, for the sources are again silent on this point. The *perpetua con-*

[1] *Cod. Just.*, iv, 65, 11. (244 A. D.) "Invitos conductores seu heredes eorum post tempora locationis impleta non esse retinendos saepe rescriptum est." *Cf. Dig.*, xlix, 14, 3, 6. "Divus etiam Hadrianus in haec verba rescripsit: 'Valde inhumanus mos est iste, quo retinentur conductores . . . publicorum agrorum, si tantidem locari non possint.'". This latter rescript, however, probably refers to the capitalist lessees of the imperial domains rather than to the small tenants. *Cf. infra*, p. 306.

[2] Marcellus in *Dig.*, xliii, 16, 12. Papinian in *Dig.*, xliii, 16, 18.

ductio is mentioned once in the *Institutes* of Gaius,[1] and once in a rescript of the Emperor Gordian in 239 A. D.,[2] but in both cases the *conductor* referred to appears to have been a large lessee and not a colonus. But re-leasing was very common. No formal contract was necessary either verbal or in writing. The simple agreement of each party was sufficient.[3] If neither party raised any questions about the contract at the time of the expiration of the lease their mutual silence constituted an automatic renewal. "He who leases a tenement for a certain time remains a colonus after the expiration of the lease," said Ulpian.[4] Certain epitaphs of coloni which have been preserved to our day show that tenant farmers remained for as long as fifty years cultivating the same holding.[5]

[1] *Instit.*, iii, 145.

[2] *Cod. Just.*, iv, 65, 10.

[3] *Dig.*, xix, 2, 14. "Et hujus modi contractus neque verba neque scripturam utique desiderant, sed nudo consensu convalescunt."

[4] *Dig.*, xix, 2, 14. "Qui ad certum tempus conducit, finito quoque tempore, colonus est." *Cf. ibid.*, xix, 2, 13, 11. "In ipso anno quo tacuerunt, videantur eandem locationem renovasse."

[5] *C. I. L.*, ix, 3674. "T. Alfeno Attico ... colono f(undi) Tironiani, quem coluit ann(os) n(umero) L." *Ibid.*, x, 1877. "Q. Insteio Diadumeno Augustali ... coluit annis XXXXV." *Ibid.*, x, 1918. "Afranio Felici ... q(ui) coluit ann(os) XXIII."

It is in the light of these conditions that we can best study the two third-century texts in the Digest which have led many scholars to regard the servile colonate as an institution which existed before the legislation of the Codes. (*Cf. supra*, pp. 31, 58, 109, 193.) The decision of Ulpian (*Dig.*, L, 15, 4, 8), that "if any proprietor does not register his *inquilinus* or his colonus he will himself be held answerable to the authorities of the census," does not seem to imply more than a careful supervision of the census returns by the landlords before the reform of Diocletian put the administration of the census under the control of state officials. (*Cf.* Savigny, *Vermischte Schriften*, vol. ii, pp. 42-43.) The decision of Marcian (*Dig.*, xxx, 1, 112, *pr.*), that "if anyone bequeaths *inquilini* without the estate to which they belong the bequest is null and void," cannot indicate that the tenant farmers were legally attached to the soil at this time, for the rescript of Philip of 244 A. D.

Not only was the declining productivity of the soil an important cause in transforming the condition of the coloni, but it also had an equally significant effect on the condition of the agricultural slaves. The old military system of handling slaves in groups of ten (*decuriae*) each under its own slave driver (*decurio*) may have proved the most profitable method of exploiting the land while the fertility of the soil was still unimpaired. But after the soil commenced to lose its native richness the disadvantages of this purely exploitative system commenced to become apparent. Pliny the Elder held that the cultivation of land by slaves from the *ergastulum* was "the very worst plan of all",[1] while the younger Pliny said that neither he nor any of his neighbors employed chained slaves on their estates.[2] In fact it was the failure of the chain gang and the *ergastulum* which had caused many proprietors to supplant slavery on their estates by a small tenant system, first on the poorer land [3] and later on the whole estate, for self-interest caused the tenant to cultivate the land less wastefully, particularly where he regarded his tenure as a permanent one.

However, possibly on a majority of estates, cultivation by slaves continued as the principal form of agriculture. But beginning about the last century of the Republic there was a marked change in the treatment of the slaves. They were given some property of their own (*peculium*) and were encouraged to marry and have children, both of which, ac-

renewed the old edict that the tenantry could not be retained on an estate after the expiration of their leases. (*Cod. Just.* iv, 65, 11.) Yet the decision of Marcian does show that by this time the tenants were so closely tied to an estate by bonds of mutual interest and custom that there was no thought of separating them from their holdings even on the occasion of the death of the proprietor.

[1] Plin., *N. H.*, xviii, 7. "Coli rura ab ergastulis pessumum est."

[2] Plin., *Epist.*, iii, 19. "...nam nec ipse usquam vinctos habeo nec ibi quisquam."

[3] *Cf. supra*, p. 260.

cording to Varro, "would make them more steady and attach them to the estate".[1] Later they were given plots of land which they cultivated as tenants of their master. Such slaves were called "*quasi coloni*",[2] they were not included in the inventory of the estate any more than the coloni,[3] they paid a fixed rent,[4] and like the coloni they might fall in arrears in their rent to their landlord and master.[5] So, just as the necessities of agriculture were gradually transforming the coloni with short-term leases into perpetual tenants, in practice if not in law, the same forces were transforming the agricultural slaves into tenants who, however different they might be in the eyes of the law, in their economic condition were growing more and more like the coloni with each succeeding generation.

The tendency in the direction of long-term or perpetual tenure in the interests of the conservation of the soil was probably more consciously guided on the imperial domains than on most private *latifundia*. It is true that emperors like Nero and Domitian regarded their possession as pleasure estates and cared little what would happen to them in the future. But such was not the attitude of Vespasian, Nerva, Trajan, Hadrian, and the Antonines, emperors who were fully cognizant of the serious situation in which agriculture found itself and who took vigorous steps to build up a state peasantry on the imperial domains.[6] Vespasian

[1] Varro, *R. R.*, i, 17, 5. "...dandaque opera ut habeant peculium et coniunctas conservas, e quibus habeant filios; eo enim fiunt firmiores ac coniunctiores fundo."

[2] *Dig.*, xxxiii, 7, 12, 3. "Servus, qui quasi colonus in agro erat..."

[3] *Dig., loc. cit.*, xxxiii, 7, 18, 4.

[4] *Dig.*, xxxiii, 7, 18, 4.

[5] *Dig.*, xxxiii, 7, 20, 1 and 3.

[6] The Emperor Tiberius had lamented mournfully over the agricultural desolation of Italy and the complete dependence of the Roman population upon foreign food supplies, (Tacitus, *Ann.*, iii, 54), but so far as we know he proposed no constructive remedies to improve the situation.

caused the domains to be surveyed, boundary stones to be set up, and when private estates had encroached on the domains he saw that the land was restored to the crown.[1] The domains were then settled by peasants who became *coloni imperatoris*.[2] The development of a state peasantry on the imperial domains was temporarily checked during the reign of the tyrant Domitian, who interested himself in making gardens[3] of some of the crown estates and allowed many of the others to fall into utter ruin.[4] But Nerva, during his short reign, immediately returned to the policy of Vespasian. "To the very poor Romans," said Cassius Dio, "he granted allotments of land worth as much as fifteen million (drachmae)."[5] Settlers were sought for the former "gardens" of the prince by Trajan,[6] while further assignments of land were made by Trajan, Hadrian,[7] and probably Antoninus Pius,[8] whom the Digest shows to have been especially watchful of the interests of the *coloni Caesaris*.

[1] *Gromatici Veteres* (Ed. Lachmann), i, p. 211, Calabria. "Ab imp. Vespasiano censita;" *ibid.*, p. 261-262. Apulia et Calabria. "...collectione petrarum...et naturalibus signatis lapidibus;" *ibid.*, p. 122. "Lapides...inscripti nomine divi Vespasiani sub clausula tali, occupati a privatis fines: P. R. restituit."

[2] *Ibid.*, p. 230, Abella. "Coloni vel familia imperatoris Vespasiani iussu eius acceperunt." *Ibid.*, p. 236, Nola. "Colonis et familiae (Vespasiani) est adiudicatus (ager)."

[3] Plin., *Paneg.*, 50, 6.

[4] *Ibid.*, 50, 3. "...foeda vastitate procumbant."

[5] Cassius Dio, lxviii, 2, 1. "τοῖς τε πάνυ πένησι τῶν Ῥωμαίων ἐς χιλιάδα καὶ πεντακοσίας μυριάδας γῆς κτῆσιν ἐχαρίσατο."

[6] Plin., *Paneg.*, 50, 6. "Nunc princeps in haec eadem dominos quaerit ipse inducit; ipsos illos magni aliquando imperatoris hortos..."

[7] *Gromatici Veteres*, i, p. 236. Ostensis ager. "Ab imppp. Vespasiano, Traiano, et Hadriano...colonis eorum adsignatus." *Ibid.*, p. 234. Laurum Lavinia. "Ager eius ab imppp. Vespasiano, Traiano et Adriano in lacineis est adsignatus." *Ibid.*, p. 235. Lanuvium. "Imp. Hadrianus colonis suis agrum adsignari iussit."

[8] *Dig.*, i, 19, 3, 1; L, 1, 38, 1.

"Such is the bounty of the Prince and such is the tranquility of the present age that he thinks us subjects worthy of enjoying what emperors have enjoyed," said Pliny in his *Panegyric* to Trajan.[1] But the emperors did not make these assignments of land out of their domains simply from the goodness of their hearts, as Pliny implied. Wealthy private citizens might use their estates in Italy as hunting grounds or parks,[2] and pleasure-seeking monarchs like Nero and Domitian might neglect the interests of the realm to satisfy their own personal vanity. But the wiser emperors saw that the decline in agriculture must be checked if the imperial revenues were not to be dried up at their source. Hence they tried every legal means to insure the continuous cultivation of their domains. The *actor,* the slave or freedman manager of the agricultural slaves of a domain, could not be sold[3] or alienated[4] from an estate of the crown without the consent of the emperor. If the *actor* should be sold the law declared the sale null and void,[5] and if he should be emancipated and then leave he would lose his freedom.[6] Such forcible means of retaining agricultural laborers on the domains of course could not be legally applied to coloni, who were freemen, although probably force was occasionally employed by too zealous *procuratores.*[7] But attempts were made to hold them by giving them certain rights and privi-

[1] *Paneg.,* 50, 7. "Tanta benignitas principis tanta securitas temporum est, ut ille nos principalibus rebus existimet dignos."

[2] "Voluptaria praedia." *Dig.,* vii, 1, 13, 4. *Cf.* Heisterbergk, *Die Entstehung des Colonats,* pp. 67-68; Heitland, *Agricola,* pp. 365-366.

[3] *Dig.* xlix, 14, 46, 7.

[4] *Dig.,* xlix, 14, 30.

[5] *Dig.,* xlix, 14, 46, 7. "Et si veneant (actores), venditio nullas vires habebit."

[6] *Dig.,* xlix, 14, 30. "Si manumissi fuerint (actores), revocantur ad servitutem."

[7] *Cf. supra,* p. 278, n. 1.

leges which made their condition a particularly favored one. The Emperor Antoninus provided that they should receive special police protection from the imperial *procuratores* themselves.[1] They were allowed to bring their disputes directly before the *procuratores*, thus relieving them of the tedious processes of the ordinary courts of law;[2] and if they were unable to secure satisfaction from the *procuratores* it was always possible to appeal to Caesar, sometimes with excellent results as the inscriptions of Souk-el-Khmis and Gazr-Mezuâr testify.[3] From the middle of the second century the imperial coloni received certain exemptions from municipal taxes, as it was feared that the payment of these might interfere with the prosperity of the domain,[4] while in the third century they were completely relieved of municipal *munera*, "that they might be more suitable tenants for the domains of the *fiscus*," as the jurist Callistratus phrased it.[5]

The tendency in the direction of a settled and hereditary peasant class probably existed in all parts of the Roman world, in Italy as well as in the provinces. The development must have differed considerably in different parts of the Empire, for the agrarian conditions in the various provinces were very dissimilar and the contrast was striking between the Italian tenant, who held a short-term lease and paid a money rent, and the African colonus or the Egyptian γεωργός, to whom the contract of *locatio-conductio* was unknown. Unfortunately, we have only a comparatively few records

[1] *Dig.*, i, 19, 3, 1.

[2] *Dig.*, xliii, 8, 2, 4. "Sed si forte de his sit controversia, praefecti eorum judices sunt."

[3] *Cf. supra*, pp. 142, 143.

[4] *Dig.*, L, 1, 38, 1. "... colonos praediorum fisci muneribus fungi sine damno fisci oportere."

[5] *Dig.*, L, 6, 6, 11. "Coloni quoque Caesaris a muneribus municipalibus liberantur, ut idoniores praediis fiscalibus habeantur."

of the many individual measures taken in various parts of the Roman world to establish a settled peasant class. Yet enough have been preserved for us to be able to trace the general trend with some degree of assurance; and we believe that the legal attachment of the coloni to the soil was merely the last step in a series of measures taken with the object of maintaining the continuous cultivation of the land. If a settled peasantry already existed in a province Rome at first did little more than continue the pre-Roman policies. If the heavy drain of the Roman tribute proved too much for land where the soil was thin and caused it finally to be deserted as unprofitable, abatements of rent and encouragements of various sorts were offered to reclaim the abandoned land and restore it to its former productivity. And when encouragements failed, force was applied both to the wealthy proprietor and to the poverty-stricken peasant to keep the land in constant cultivation.

If the country which Rome conquered had previously had a satisfactory system of raising revenue the Roman administration ordinarily left it intact; and as most of the revenue was derived from some sort of a land tax the condition of the agricultural population and its relation to the fiscal administration remained very much the same as it had been before the Roman occupation. This certainly was the case in Sicily, Asia Minor, and Egypt, as Rostovtzeff has shown.[1] In Sicily, from the time of the Syracusan tyrant Hiero II, the state assumed ownership of all the land of the island charging the cultivators as rent one-tenth of the produce which it collected by means of tax-farmers.[2] After the

[1] *Cf. supra*, pp. 212, 216, 218. Likewise, in Gaul, Guizot believed that the Roman conquest made little difference in the status of the agricultural population. *Cf.* Guizot, *Cours d'histoire moderne*, iv, p. 249; Rostowzew, *Studien*, p. 381.

[2] Cicero, *In C. Verr.*, ii, 3, 13.

Roman conquest the land passed into the ownership of the Roman state and the Sicilian peasants remained permanent tenants on state land as before, and paid the tithe under the name of *decuma* now instead of δεκάτη. The coloni at times might be burdened with heavier payments under a corrupt proconsul, such as Verres, but the indignation of Cicero shows that this was altogether contrary to the usual policy;[1] and there is no doubt that the Sicilian coloni had less to fear in the way of arbitrary exactions under the early Empire than under the Republic.

Likewise in Asia Minor the Roman conquest was little more than a change of overlords so far as the peasants were concerned. They appear as permanent residents of little agricultural villages in the inscriptions of the third and fourth centuries B. C.,[2] and probably had existed in a similar state previous to the Greek and Persian conquests.[3] Some were tenants on the public domain and some on municipal or private estates, but they were all subject to a uniform tax (φόρος) paid usually in kind.[4] The grain tithe continued to be paid after the Roman conquest, and when the Roman tax-farmers forced the peasantry to pay more than the customary amount the surplus was returned to them by Julius Caesar, while they were permitted to pay the tithe to the native tax-gatherers.[5] Three centuries later, the Ormelian inscriptions show the coloni still cultivating the land under the direction of government functionaries and

[1] Cicero, *op. cit.*, ii, 3, 25.

[2] For the Laodice inscription, see above p. 206; for references to more recently discovered documents containing accounts of villages being granted or sold by the Seleucids intact, see Westermann, *Class Philol.*, xvi (1921), pp. 12-17, 391-392.

[3] *Cf.* Westermann, *Am. Hist. Rev.*, xx (1915), pp. 733-734.

[4] For references see Rostowzew, *Studien*, p. 247; Schulten, *Adhandl. d. Gött. Ges. d. Wiss., Philol.-Histor. Klasse*, ii (1897), p. 46.

[5] Appian, *Bel. Civ.*, v, 4; *cf.* Cicero, *Ad. Att.*, v, 13, 1; *Pro Flac.*, 19.

living in village communities each with its own officers, priests, and common fund.[1]

In Egypt the Romans found a system of agricultural administration admirably fitted for their purposes. The fertile Nile valley had been used by the Hellenistic monarchs to produce a large revenue for themselves and every step had been taken to insure the steady cultivation of the land. The peasants were not bound to the soil—in fact they held short-term or precarious leases—but they were completely under the control of administrative officials and the principle of ἰδία kept them constantly within the tax supervision of their registration district.[2] It was a system which had operated with conspicuous success in the past, and so far as we are able to discover, the condition of the agricultural population did not change materially in the first centuries of Roman rule. The γεωργοὶ continued to live in village communities with their own officers who were responsible to the administration officials for the supply of the heavy government liturgies and rents in kind, just as under the régime of the Ptolemies.[3]

Whether the Romans after their conquest of Africa merely continued the Carthaginian system of land tenure or introduced one which they devised themselves it is impossible to state because of our complete ignorance of the condition of the African peasantry under Carthaginian rule. But the African inscriptions, brought to light in the last half-century, reveal beyond the question of a doubt that there existed in the African *latifundia* of the second century a settled and indigenous tenantry, who, though not bound to the soil, nor-

[1] Sterrett, *An Epigraphical Journey in Asia Minor*, pp. 48-57. *Cf. supra*, pp. 203, 218-219.

[2] *Cf. supra*, pp. 213-215.

[3] For references see Rostowzew, *Studien*, pp. 81-82, 163, 218-219; De Zulueta, *De Patrociniis Vicorum*, pp. 60-64.

mally had no thought of leaving their native fields. It was a condition similar to that which had apparently existed from the earliest times in Egypt and Asia Minor and toward which economic forces were already bringing the short-term tenant of the Italian domains. The head tenants (*conductores*) of the African domains, it is true, held the regular five-year lease. But we have no record that the coloni, the actual cultivators of the fields, held leases of any kind. In fact everything points to the conclusion that they did not. When the coloni of the *saltus Burunitanus* complained of the encroachments of the *conductor* they did not say that he had exceeded the terms of their leases, but that he had demanded rent and services in excess of those provided by the *lex Hadriana*, an imperial regulation. In their petition to the emperor they speak of themselves not as free contracting parties but as "thy native peasants, and foster children of thy domains."[1] They were not, then, tenants like the Italian coloni described in the Digest, but were crown peasants whose condition was ruled by administrative regulations such as the *lex Manciana* and the *lex Hadriana*. The *lex Hadriana* was called a *perpetua forma* and was still in force during the reign of Septimius Severus[2] three-quarters of a century after the time of Hadrian. The coloni of the *saltus Burunitanus* complained bitterly of their mistreatment at the hands of the *conductor* and his allies, the *procuratores* at Carthage, who had sent soldiers to scourge them for their temerity in petitioning the emperor; and yet they did not leave the domain. The coloni on a neighboring *saltus*, which was mentioned in the mutilated inscription of Gazr-Mezuâr, did threaten to abandon the *saltus* unless their grievances were redressed, yet such an action seems to have

[1] *C. I. L.*, viii, 10570, iii, 28-29. "... rustici tui vernulae et alumni saltum tuorum."

[2] *Cf. supra*, pp. 140, 181.

been looked upon as a last resort. The coloni of the *saltus Burunitanus* spoke of themselves as born on the estate [1] and apparently had no other intention than to continue to live there during their whole lives.

Besides the long inscriptions which were discussed in Chapter V and Chapter VI a large number of brief inscriptions have been discovered in Africa which add significant bits of information in regard to the condition of the tenants on the great domains. In the often quoted passage in which Frontinus described the huge extent of the African estates which individual landlords possessed before the Neronian confiscations, he said, "And these private proprietors have on their estates a by no means small plebeian population and villages about the villa something like fortifications." [2] The coloni of the African *latifundia* seem habitually to have lived in little village communities called *vici* or *castella*. Not only are there frequent references to them in inscriptions,[3] but the ruins of these villages are still today to be found in Northern Africa.[4] In fact, as Beaudouin has said,[5] the provincial African estate with its central villa and the surrounding peasant villages was in many respects like the medieval manor. Like the manor it was largely a self-sufficient economic unit. On the estate itself all the essentials of community life were to be found. The inscription of

[1] *C. I. L.*, viii, 10570, iii, 29, "... vernulae et alumni saltum tuorum."

[2] *Gromatici Veteres*, Ed. Lachmann, vol. i, p. 53. "...habent autem in saltibus privati non exiguum plebeium et vicos circa villam in modum munitionum."

[3] *C. I. L.*, viii, 280. "Aug(ur) vici..." *C. I. L.*, viii, 8280, "...vicu(m) et nundina(m)." *C. I. L.*, viii, 8777, "... a colonis eius castelli Cellensis." *C. I. L.*, viii, 8701, "...per colonos eiusdem kastelli." For the complete list of references see Schulten, *Grundherrschaften*, pp. 45 *et seq.*

[4] *Cf.*, Beaudouin, *Nouv. rev. hist. de droit fr.* xxi (1897), pp. 567-568; Schulten, *op. cit.*, p. 100.

[5] *Op. cit.*, p. 565.

Gazr-Mezuâr speaks of "shops always available for the public use," [1] which the domain mentioned in that inscription possessed. The community had its own baths,[2] which must have been rather extensive, for in the ruins of some of the estates, as they exist today, the remains of the baths are more conspicuous than those of the villa itself.[3] For the religious life of the coloni the *saltus* had its own temple [4] or portico [5] with attendant priests [6] and augurs.[7] The inscription of Henchir Salah speaks of coloni building a temple and dedicating it to Ceres, probably the chief deity of the wheat province of Africa.[8] Besides their priests the coloni had their own officials. The inscription of Henchir Mettich and Souk-el-Khmis were both inscribed by the "headman" (*magister*) of the coloni.[9] The tenants of the *Villa Magna Variani* also possessed a *defensor,* evidently a man of Carthaginian blood to judge from his name, "Felix Annobal Birzil." [10]

[1] *C. I. L.*, viii, 14428, A, 13. "... tabernae quae semper publicis usibus."

[2] *C. I. L.*, viii, 14457. "In his praed(iis) ... (thermas) vetustate conlapsas (coloni restituerunt)."

[3] *Cf.* Schulten, *op. cit.*, p. 50.

[4] *C. I. L.*, viii, 16411. Coloni fun(di ... aedem fecerunt) cum columnis ornatis."

[5] *C. I. L.*, viii, 11731. "Porticum sacram a solo co(loni saltus Massipiani fecerunt)."

[6] *C. I. L.*, viii, 291. "Sacerdos." *C. I. L.*, viii, 580. "Sacerdos Cererum."

[7] *C. I. L.*, viii, 280. "Aug(ur) vici."

[8] *Année Épigraphique,* 1893, No. 66. "... plebs fundi ... itani maceriam dom(us) Cerer(um) s(ua) p(ecunia) f(ecit) idemq(ue) ded(icavit.)"

[9] Henchir Mettich, i, 31. "(Ha)ec lex scripta a Lurio Victore Odilonis magistro." Souk-el-Khmis, iv, 28-29. "Cura agenti C. Julio ... ope Salupti mag(istro)." *Cf.* Henchir Salah, "Plebs fundi ... itani ... mag(istro) P. Statilio Silvano."

[10] Henchir Mettich, i, 32. "Defensore Felici Annobolis Birzilis."

The semi-communal life of the village required of the coloni a number of services in addition to the *operae* which they owed the *conductores*. These services were principally connected with building operations. Brick-making is mentioned in the inscription of Gazr-Mezuâr.[1] Several inscriptions speak of the walls of the village (*castellum*) being built by the coloni.[2] Another refers to coloni constructing two arches in addition to other buildings by the order of the provincial procurator;[3] and the work of the coloni in building temples, porticoes and baths has been mentioned above.

We have, then, the picture of a small tenantry living in their own villages under conditions which made for permanence. They were kept there by no force of law. If a colonus abandoned land which he had once undertaken to cultivate he was visited with no other punishment than the loss of his claim to the land after two years. If the coloni were oppressed by illegal exactions of the *conductor* they could still threaten to leave, as the inscription of Gazr-Mezuâr shows. But the ties of custom which held them to the lands which their ancestors had cleared and to the villages in which they had been brought up were not easy to break. And as long as the land yielded them a fairly bountiful return it was not likely that they would ever think of deserting their homes and starting afresh elsewhere.

The African inscriptions have proved of great value in presenting a clear picture of a type of coloni who differed considerably from the short-term tenants described in the Digest. But in addition to this, these inscriptions are able

[1] A, 8, "... paleam in lateribus ducendis."

[2] *C. I. L.*, viii, 8701. "... muros kastelli Dianensis extruxit per colonos iusdem kastelli." *Cf. C. I. L.*, viii, 8777.

[3] *C I. L.*, viii, 587. "Coloni saltus Massipiani aedificia vetustate conlapse... arcuus duos a s(olo) f(ecerunt) iubente Provinciale Aug(usti) lib(erto) pro(curatore.)"

to give us some insight into the Roman provincial agricultural policy of the first and second centuries. The condition of the agricultural population of Africa was governed by provincial regulations of which we have record of two, the *lex Manciana,* an ordinance either of the first century or earlier, and the *lex Hadriana,* a regulation of the second century. One of the most significant features of these ordinances was the fact that they established a fixed rent which the coloni were to pay to the *conductores* or the proprietors of the estates within their jurisdiction. This may not have been an innovation of the Roman administration in Africa, for fixed rent may have been habitual in the Carthaginian system of land tenure, just as it was in some of the Hellenistic domains. But fixed rent established by *perpetuae formae* was certainly not characteristic of Roman land tenure as formulated by the jurists of the Digest. And when it was made a part of the domanial regulations of Africa by the Roman administrative officials it was a step in the direction of permanence of tenure; for as long as the rent was not fixed the tenant would hesitate to make improvements on the land for fear that the rent might be raised. That such was only too likely to take place can be seen from a decision of Scaevola in the Digest. A colonus had set out some vines, although his lease had not provided for it, and on account of this improvement in his tenancy the landlord increased the rent by ten pieces of gold a year. The colonus was subsequently evicted because he was unable to pay the additional rent and the question arose whether he could lay claim to indemnity for the expense he had undergone in setting out the vines. Scaevola decided in this case that such an indemnity was due him,[1] but, nevertheless, it is seen that where the rent was not fixed the tenant would seldom

[1] *Cf. Dig.,* xix, 2, 61.

feel that it was worth while for him to make any extensive improvements on his farm. But when the rent was fixed the opposite situation developed; for then the whole profit from the improvements would accrue to the tenant and he would make every effort to remain on the same farm and pass it on, if possible, to his children. That the administration was very anxious to have the coloni constantly making improvements in the land is seen from the provisions in both the *lex Manciana* and *lex Hadriana* relative to setting out fruit trees and vines and reclaiming waste or uncultivated land.

It is interesting to compare the *lex Manciana* with the *lex Hadriana* in order to see the increasing pains the administration was taking to insure the steady cultivation of the land. The *lex Manciana* had granted exemption from rent for five years' produce for figs and vines and for olives that were grafted on wild olive trees, while an abatement of ten years' crops was allowed on olive orchards newly set out.[1] The *lex Hadriana* increased the rent-free period from five to seven years for vines and fruit trees, while olives, whether planted or grafted, received a ten-year exemption; and the important addition was made that after the abatement period had ended only those fruits should pay a share as rent which were marketed by the cultivators.[2] Inducements were made in each ordinance for the reclamation of waste land. The right of occupying lots of the *subcesiva* was limited in the *lex Manciana* to coloni who lived on specified domains, and after the land had been reclaimed they were required to pay the customary share rent to the *conductores*.[3] As a reward for reclamation they received the right of *usus proprius*, a privilege the nature of which has puzzled all commentators,

[1] *Cf. supra*, p. 173.

[2] *Cf. supra*, p. 182.

[3] *Cf. supra*, pp. 175, 179-180.

but perhaps meant, as Gsell suggested, the permission which the cultivators received of providing for their own subsistence before dividing the crop with the *conductores*.[1] But apparently the reclamation of waste land did not go so rapidly as the administration wished, for the ordinance of Hadrian opened these lands not simply to the imperial coloni but to anyone who wished to cultivate them.[2] In addition abandoned land on the estate which under the *lex Manciana* had reverted to the *conductores* under the *lex Hadriana* was opened to squatters under the same terms as waste land, provided that it had not been cultivated for ten years. Peasants who reclaimed these lands after the period of exemption had expired paid share rent to the *conductores* in wine, fruits, and olive oil, but so far as grain was concerned, the crop, of course, in which the Roman administration was most vitally interested, after paying rent five years to the *conductores* they turned over their shares directly to the *fiscus*, thus becoming direct tenants of the crown.[3] Most important of all, the peasant settlers received not merely the right of possession and enjoyment of their claims, but the right of transmitting them to their heirs,[4] a development of tremendous significance in the history of the tenantry and without doubt the most important step in the direction of permanent tenure before the adscription to the soil.

The soil of the greater part of Italy was pretty well exhausted by the end of the Republic; and, although the conservation policy of the more far-sighted emperors of the

[1] *Cf. supra*, p. 175.

[2] Ain-el-Djemala, ii, 8-9. "...potestas fit *omnibus* e(tia)m eas partes occupandi..." There is no mention made of *coloni* in either the inscription of Ain Ouassel or Ain-el-Djemala.

[3] *Cf. supra*, p. 182.

[4] Ain Ouassel, ii, 7-9. "...isque qui occupaverint possidendi ac fru(en)di eredique s(u)o relinquendi id ius datur..."

early Empire was able to check the decline of agriculture to some extent, it came too late to accomplish very much. The vitality of the Roman empire lay in the provinces which annually shipped vast stores of food to the capital. Consequently it was necessary to insure the maintenance of agriculture in the provinces. Even soils as fertile as those of northern Africa could not bear heavy crops year after year without showing some signs of declining fertility. And so, even in the second century, we read in the *lex Hadriana* of land within the estates being abandoned and of the strenuous efforts made to restore them to cultivation, while encouragements of various sorts were held out as inducements to increase the arable area; and the grant of hereditary rights on the reclaimed land offered the greatest possible inducements to coloni to keep the land in the best condition possible.

But it needed the strong hand of a vigilant emperor to see that the rights and privileges granted to the imperial coloni were observed so that a contented class of small tenant farmers would continue to find it to their advantage to keep the land in constant cultivation. In a dominion as widely extended and composed of as many and as heterogeneous elements as that of the Roman Empire a vast army of bureaucratic officials was required to oversee the provincial land which owed tribute to the *fiscus*. It was an almost impossible task to prevent these officials and the great capitalist lessees of the imperial domains from increasing their demands on the peasantry. In some cases, as Beaudouin has maintained,[1] the avarice of the *conductores* may have been due to the arrogance which came from their wealth and the prestige of their position as direct lessees of the emperor. In some cases it may have been due to the ability of the strong to take advantage of the weak. But in many

[1] *Nouv. rev. hist. de droit fr.*, xxi (1897), pp. 680-681.

cases the *conductores* of the second and third century, like the *curiales* of the fourth, themselves were hard pressed. Their canon to the provincial administration had to be paid. The constant drain of the grain tribute to Rome, which robbed the soil of the precious plant nutrients and did nothing to return them, commenced to manifest itself in the shape of smaller harvests. Hence the necessity for more intensive cultivation and the application of more labor to the exploitation of the land, as the increased *operae* which the *conductor* demanded on the *saltus Burunitanus*. The *conductores* found themselves in between two millstones, the demands of the provincial *procuratores* and the *formae perpetuae* of their sub-tenants. The requirements of the *procuratores* were inflexible, for they too were middlemen and were held responsible by the treasury officials at Rome that there should be no diminution in the amount of grain shipped to Italy. The *procuratores* pressed upon the *conductores* who found it easier to increase their demands upon the coloni than to obtain remission from the *procuratores*. The *tributum* was saving Italy from starvation; but it was crushing the life out of the provinces.

A virgin soil is such a storehouse of nitrogen, phosphoric acid, potash, and other plant-food constituents that it will bear many harvests without any diminution in the crop. Yet the time will inevitably come when the fertility of the soil will gradually decline unless the essential chemical elements are restored to it and the land is kept in good texture so that it can avail itself of them. The modern farmer, even though he carries away a large crop from his farm every year, is careful to see that a part of his gross profits are used in returning the necessary plant nutrients to the soil and keeping it in good tilth by applying manures and fertilizers or by plowing under green manuring crops. But sometimes the cultivator is anxious only to make the greatest

immediate profit and exploits the land without making any return of the plant food which he has taken away. Or sometimes he must make such heavy payments that nothing is left from his gross profits to be reinvested in the soil; nor can he afford to let the land rest and regain its fertility by Nature's methods before it becomes so completely worn out that it can no longer support sufficient plant life to check erosion. In these cases after the soil has lost its virgin fertility it rapidly deteriorates until it yields such meager crops that the cultivator is tempted to desert it.

This was the case of the Roman provincial. As long as the soil retained its native richness he could pay the tribute. The policy of the Roman provincial administration in fostering long-term and hereditary holdings was a direct incentive to the peasant to maintain the fertility of his plot of land. Yet the land was losing in fertility even under the best cultivation.[1] The numbers of those in the unproductive classes were enormous, and despite the efforts of the emperors to reduce them they continued to be a burden on the treasury more and more difficult to support. The area of the productive regions of the Empire was constantly diminishing and the pressure of the land tax fell all the more heavily on the regions whose soil had not yet been worn out. Greece[2] and Italy were growing more unproductive every

[1] Of course the Roman knowledge of scientific agriculture cannot be compared to that of the present. Yet the familiarity of the Roman agricultural writers with methods of restoring fertility to the soil was surprising and is certainly superior to any European practice prior to the agricultural revolution of the eighteenth century. We have no record, except in Egypt, whether or not the teachings of the agricultural writers were ever actually applied; yet the administrators of the imperial domains must have been acquainted with them. *Cf.* Simkhovitch, *Pol. Sci. Quart.*, xxxi (1916), pp. 220-221.

[2] On the decline of fertility in Greece see Guiraud, *La propriété foncière en Grèce* (Paris, 1893), pp. 548 *et seq.*; Justus von Liebig, *Die Chemie in ihrer Anwendung auf Agricultur und Physiologie*, 7th Ed. (Brunswick, 1862), p. 96.

generation, while to Salvian, writing in the fifth century, the fertile grain provinces of Spain and Africa, whose wheat had once yielded a hundred-fold and more,[1] as well as the recently exploited province of Gaul, appeared utterly ruined.[2] "All the land between the stormy Black Sea and the Adriatic (i. e., Thrace, Moesia, and Illyria) lies waste, without cattle and cultivated by no coloni," said Claudian, "just like burning Libya, which, always parched by the sun, is never brought under cultivation." [3]

One country alone seemed for a long time unaffected by the heavy tribute and its disastrous effects on the productivity of the soil. This was Egypt where the annual overflow of the Nile constantly renewed the fertility of its fields. While the population of the Empire was steadily declining the population of Egypt maintained itself and even increased a little.[4] While the other provinces found it increasingly difficult to furnish their requisitions of grain to the capital, Egypt continued to supply Rome and other cities annually with millions of *modii* of grain. There was no danger of exhausting the fertility of the Nile valley; for the overflow of the Nile deposited silt which it had collected on its long

[1] Plin., *N. H.*, xviii, 21.

[2] Salvianus, *De Gubernat. Dei.*, iv, 4. "Denique sciunt hoc Hispaniae, quibus nomen relictum est, sciunt Africae, quae fuerunt, sciunt Galliae devastatae..." *Cf.* Simkhovitch, *op. cit.*, p. 231. Guiraud (*op. cit.*, p. 548) judges from modern chemical analyses of African soil that it was the unreplaced loss of phosphoric acid which caused the land of Roman Africa to lose its fertility.

[3] Claudianus, *In Rufinum* (395-404 A. D.), ii, 38-42.

"Omnis quae mobile Ponti
Aequor, et Hadriacas tellus interjacet undas,
Squalet inops pecudum, nullis habitata colonis,
Instar anhelantis Libyae, quae torrida semper
Solibus humano nescit mansuescere cultu."

[4] *Cf.* Simkhovitch, *op. cit.*, pp. 232-233; Seeck, *Geschichte des Untergangs der antiken Welt*, vol. i, p. 347.

journey from Abyssinia, so that the Nile-valley peasant cultivated soil which was perennially virgin. Hence the enormous importance of Egypt in the economic life of the Roman Empire. After Julius Caesar had conquered Egypt he did not make it a province for fear that an ambitious governor might establish himself there and make it the seat of revolt.[1] Augustus made it a province,[2] but largely on account of its importance in the production of grain he retained the administration in his own hands.[3] "In view of the populousness of both cities and country," said Cassius Dio, ". . . and the importance of grain supplies and revenue, so far from daring to entrust the land to any senator, he (Augustus) would not even grant one permission to live in it."[4] The prefects were appointed not from the powerful senatorial families, but from the equites[5] who could be kept more thoroughly under the imperial control. In the next reign the jealous anger of Tiberius was aroused because Germanicus had entered Egypt without his permission.[6] This was regarded by the emperor almost as treason, for a general controling Alexandria had it in his power to reduce Italy to famine by preventing the shipments of Egyptian grain.[7]

Egypt had for centuries before the Roman conquest been

[1] Suet., *Jul.*, 35.

[2] Suet., *Aug.*, 18.

[3] Tac., *Hist.*, i, 11, "Ita visum expedire provinciam . . . *annonae fecundam* . . . ignaram magistratuum domi retinere."

[4] Cassius Dio, 51, 17. Trans. by Foster.

[5] Tac., *Hist.*, i, 11.

[6] Tac., *Ann.*, ii, 59.

[7] Tac., *loc. cit.*, "Nam Augustus . . . seposuit Aegyptum, *ne fame urgueret Italiam*, quisquis eam provinciam . . . insedisset." Ferrero even argued that the infatuation of Anthony for Cleopatra was a myth, and that the real purpose of the triumvir was to establish a world empire with Egypt rather than Italy as its nucleus. *Cf. The Greatness and Decline of Rome* (New York, 1908), vol. iv, pp. 261-277.

an exporting country and her monarchs had amassed vast treasures from her favorable balance of trade. They were not satisfied simply with the produce of the flooded regions but attempted to extend the productive areas of land as far as possible. There were three "productive categories" of land in Egypt, the flooded land (βεβρεγμένη), the land which was unflooded but which was capable of irrigation (ἄβροχος), and the dry land (χέρσος).[1] Both encouragement and force were employed by the Ptolemies to bring the less valuable categories of land under cultivation. "Dry farms" (γῆ χέρσος) were granted to veterans on very favorable terms, while the taxes which they were required to pay were lower than elsewhere; and although the land legally reverted to the crown at the death of the veteran, it became customary to continue the grant of land to his eldest son.[2] Similar favorable leases were granted to cultivators who set out vines and fruit trees and who attempted to reclaim abandoned or waste land;[3] and where emphyteutic leases were not sufficient to induce the cultivation of the unflooded land, peasants were arbitrarily settled there,[4] while the head tenants either of the royal domain (γῆ βασιλική) or of the granted land (γῆ ἐν ἀφέσει) were forced to add portions of the less valuable land to their leaseholds.[5]

The Ptolemaic system of maintaining the cultivation of the unflooded land was appropriated by the Romans and extended as far as possible. The irrigation system was given a thorough overhauling by Augustus,[6] the silt de-

[1] Westermann, *Class. Philol.*, xv (1920), p. 123.

[2] For references to papyri see Rostowzew, *Studien*, pp. 7-11.

[3] *Cf. ibid.*, pp. 14-17, 30-31, 38, 40-41.

[4] *Cf. ibid.*, pp. 53-55.

[5] *Cf. ibid.*, pp. 57-58.

[6] Suet., *Aug.*, 18. *Cf.* Westermann, "Aelius Gallus and the Reorganization of the Irrigation System of Egypt under Augustus," *Class. Philol.*, xii (1917), pp. 237-243.

posits were cleaned out and no doubt distributed on poor land, as is done today in China.[1] The system of emphyteutic sales and leases was considerably extended, greater abatements in rents and taxes were given, and the obligation of continuous cultivation was more carefully enforced;[2] and ἐπιβολή was applied not only to the lessee of state land but the private landholder as well.[3] The unflooded land capable of irrigation (ἄβροχος γῆ) was charged with higher rents and taxes than the more valuable flooded land—an ingenious device to enforce cultivation not unlike the taxation of unimproved lands advocated by the Single Taxers. But where this land was artificially irrigated (ἐπηντλημένη γῆ) by ditching from the canals or basins, or by the use of water-wheels, bucket-chains, or the ancient native device of a water-lift (shadúf), an abatement of one-half the rent was allowed.[4]

There was one significant change brought about by the Roman conquest which in due time resulted in important consequences. The Ptolemies, though foreigners, had always regarded themselves as national rulers and their policy aimed to further what they conceived to be the true interest of Egypt itself. The Roman emperors, on the other hand, ordinarily regarded Egypt as a mere province whose sole function was to supply the rest of the Empire with food products;[5] and in an age before artificial refrigeration and rapid transportation this meant grain *par excellence*.[6] The

[1] According to Strabo the increased utilitization of the waters of the Nile proved of considerable benefit to Egyptian agriculture. Strabo, xvii, 1, 3.

[2] *Cf. supra*, p. 213.

[3] *Cf.* Rostowzew, *Studien*, pp. 200-201.

[4] For a discussion of the texts see Westermann, *Class. Philol.*, xvi (1921), pp. 169-177, 184-188.

[5] Rostowzew, *op. cit.*, p. 207.

[6] *Cf.* Westermann, *Class. Philol.*, xv (1920), p. 120.

Egyptians might find it more profitable to produce market garden products, yet the Romans compelled them to cultivate grain;[1] and as the yield of the grain tribute commenced to decline in other provinces the Roman administration pressed so much harder on Egypt. No amount of intensive cultivation could injure the flooded land, but after a century or two of Roman methods of exploitation the unflooded land commenced to show the strain. Beginning with the second century, the tenants in Egypt seem to have been as frequently in arrears as those in other parts of the Empire.[2] Desertion of the land increased and it became necessary to enforce the old tax principle of ἰδία with increasing severity to keep the γεωργοὶ in their native districts. Under the Ptolemies when the peasants had been unable to pay their rents and taxes, they had found some relief by organizing a strike and marching away to a temple where they could remain until the government reduced their payments. But the Romans took away the right of sanctuary, while the attempt to strike was severely punished.[3] Yet flight was common, as the peasant often preferred the precarious life of a fugitive highwayman to performing thankless toil for the Roman tax-gatherers.[4]

Most of the references to ἐπιβολὴ and forced leases of the *gleba inutilis* come in the second century and later.[5] It was growing more and more difficult to keep the land not directly watered by the Nile under cultivation. The decline in the semi-arid districts seems to have set in about in the

[1] Plin., *N. H.*, xix, 26.

[2] Rostowzew, *Studien*, pp. 140-141; *cf. supra*, p. 269.

[3] Rostowzew, *op. cit.*, pp. 209, 217.

[4] *Ibid.*, p. 206.

[5] *Cf.* De Zulueta, *De Patrociniis Vicorum*, p. 70; Rostowzew, *Studien*, p. 200.

middle of the second century,[1] and continued with steadily increasing force during the third and fourth centuries.[2] The irrigation system, which had been renovated by Augustus, once more fell in a bad state of disrepair and some of the low land became too marshy for cultivation. The Emperor Probus in the third century by draining the swamps and improving the irrigation system was able to restore some land of cultivation.[3] But the effect of his activity was only temporary and the desert and the swamp once more encroached on the arable land. A new category of land was now mentioned in the papyri, called "entirely unproductive land" (ἄπορον).[4] In the fourth century towns like Philadelphia, Bacchias, and Euhmeria, which had been prosperous as long as the irrigation had been kept up, were swallowed up by the desert, never to be reclaimed; while towns such as Karanis and Tebtunis, which formerly had been teeming agricultural centers, became mere straggling villages on the new frontier of the desert.[5] And finally, by the beginning of the fifth century, the forced occupation of deserted villages became a regular feature of the Roman agrarian administration of Egypt.[6]

[1] De Zulueta, *op. cit.*, p. 66. Rostovtzeff, *Wisc. Stud. in Soc. Sci.*, vi (1922), p. 13.

[2] Rostovtzeff, *op. cit.*, p. 14; Westermann, *Class. Philol.*, xiv (1919), p. 164; Grenfell, Hunt, and Hogarth, *Fayum Towns and their Papyri*, pp. 16, 45.

[3] Vopiscus, *Probi Vita*, 9.

[4] Rostovtzeff cites *P. Gen.*, 66, 67, 69, 70. *Cf. Univ. of Wis. Stud. in Soc. Sci.*, vi (1922), p. 14.

[5] *Cf.* Grenfell, Hunt, and Hogarth, *op. cit.*, pp. 16, 45; Rostovtzeff, *op. cit.*, p. 14.

[6] *Cod. Theod.*, xi, 24, 6. (415 A. D.) "Ii sane, qui vicis quibus adscribti sunt derelictis ... ad sedem *desolati ruris* constrictis detentatoribus redire cogantur ... et in earum metrocomiarum locum, *quas temporis labsus vel destituit vel viribus vacuavit*, ex florentibus aliae subrogentur."

The great economic problem of the late Empire was the desertion of the fields. It was the same problem which had confronted Italy at the close of the Republic and had caused such alarm to statesmen who felt that Italy should be self-supporting. But Italy had saved herself by importing food products from her subject provinces and Rome waxed greater than ever on the contributions of conquered races to her treasury. As long as the bountiful harvests of the fertile districts in the provinces furnished an ample supply of grain to the regions of the Empire which could not support themselves there was little general anxiety as to the future of the Empire. But by the third century the declining productivity of the soil, which had already made Greece and Italy economically dependent, commenced to make itself felt in the provinces; and desertion of the fields instead of being a vexatious local problem became a world problem upon whose solution the very existence of the Empire depended. Plans of all sorts were tried by the emperors to check the evil, which was a far greater menace to the Empire than any external foe; and out of these heterogeneous measures taken by the administration there evolved the three most significant agrarian institutions of the late Empire, emphyteusis, ἐπιβολή, and the colonate.

Whether the *lex Hadriana*, which gave squatters hereditary rights over waste and deserted lands which they occupied, was a general law valid for the whole Empire [1] or merely a regulation pertaining to the African domains, it is impossible to determine from the authorities at present at our disposal. The first general law concerning the *agri deserti* of which we have record was an edict of Pertinax of 193 A. D. According to this edict Pertinax offered

[1] As Carton (*Rev. archéol.*, xxi, 1893, pp. 28, 38-39), Carcopino (*Klio*, viii, 1908, p. 179), Weber (*Die römische Agrargeschichte*, p. 257), and Ramsay (*The Cities and Bishoprics of Phrygia*, p. 284) believed.

waste land or abandoned farms in Italy or the provinces in perpetual ownership to anyone who would undertake to reclaim them; and as a reward for the expense of clearing the fields the cultivators were granted an exemption from the land tax for a period of ten years.[1] Later, attempts were made to induce veterans to settle on uncultivated lands (*terrae vacantes*) under the most favorable conditions. Not only were they offered perpetual immunity from rent to make the grant of land attractive but they were given cattle, seed, and money to defray their initial expenses.[2] In addition it was decreed that in case veterans wished to lay claim to any land which was not being worked by its owners they might do so, while the proprietor of the land was forbidden to hinder them in any way or to demand a share of the crops of the farm.[3] Finally the same right was given to any squatter, by a rescript of Valentinian II, Theodosius I, and Arcadius, giving the proprietor in this case, however, two years of grace to lay claim to the land. If the proprietor did reclaim his property within the prescribed time he was ordered to pay the squatter full compensation for his outlays; but if he made no effort to regain his property within two years, full ownership passed to the man who had occupied the land.[4]

On the imperial domains the increasing difficulty of keeping the fields in cultivation brought about an important change in the form of lease. In the early Empire the domains were ordinarily leased to capitalist lessees (*conduc-*

[1] Herodian, ii, 4, 12(6).

[2] *Cod. Theod.*, vii, 20, 3 and 8. These land grants to veterans were purely agricultural in character and are to be distinguished from the assignments of land on the border (*agri limitanei* or *fundi limitrophi*) which were granted to soldiers in return for military service. *Cf.* Garsonnet, *Locations perpétuelles*, pp. 152, 164-166.

[3] *Cod. Theod.*, vii, 20, 11.

[4] *Cod. Just.*, xi, 59, 8; *Cod. Theod.*, v, 11, 12.

tores) under the terms of the regular five-year contract of *locatio-conductio*.[1] At first the returns from the domains were sufficiently profitable for the administration to obtain *conductores* without difficulty and releasing fertile domains was no doubt as common elsewhere as on the *saltus Burunitanus*.[2] But even as early as the time of Hadrian, we read of the difficulty of finding *conductores* and of retaining them on some of the imperial domains after expiration of their leases.[3] And in the late Empire there was so little profit to be obtained from leasing the imperial domains that the *fiscus* could ordinarily obtain lessees only by means of perpetual grants which gave the grantee most of the rights of ownership, while the short-term lease almost wholly disappeared.[4]

There were three forms of perpetual leases which were utilized in the late Empire. The *jus perpetuum* or *perpetuarium*, a simple perpetual and hereditary lease, was probably the most common of the perpetual leases at first, but later was merged into the emphyteutic lease.[5] When capitalist lessees could not be obtained under the *jus perpetuum* it was frequently found advantageous to grant the land under the terms of the *jus privatum salvo canone*. This was legally a sale rather than a lease, giving the purchaser the rights of a proprietor over the estate, such as the right to free the slaves of the domain,[6] a privilege which was forbidden to

[1] Beaudouin, "Les grands domaines dans l'empire romain," *Nouv. rev. hist. de droit fr.*, xxii (1898), pp. 312-315. The *conductor* Allius Maximus of the *saltus Burunitanus* held such a lease. *Cf. C. I. L.*, viii, 10570, iii, 22-23.

[2] *C. I. L.*, viii, 10570, *loc. cit.*

[3] *Dig.*, xlix, 14, 3, 6. "Divus etiam Hadrianus in haec verba rescripsit: 'Valde inhumanus mos est iste, quo retinentur conductores ... publicorum agrorum, si tantidem locari non possint.'"

[4] *Cf.*, Beaudouin, *op. cit.*, p. 340; Garsonnet, *op. cit.*, p. 148.

[5] For texts see Beaudouin, *op. cit.*, pp. 150-151.

[6] *Cod. Just.*, xi, 62, 12.

the *perpetuarius conductor*.[1] However, as the grantee under the *jus privatum salvo canone* still had to pay a small rent to the *fiscus* in addition to his taxes, the contract was actually a perpetual lease of a very favorable character.[2] But by far the most common and important form of lease of the imperial domains was the emphyteutic lease (*jus emphyteuticum*). Applied first to abandoned domains of the emperor, in the course of time it absorbed the *jus perpetuum* and came to be used very frequently as a means of maintaining the cultivation of private estates,[3] as well as those of the emperor.

The essential characteristic of emphyteusis, the feature which distinguished it from the other forms of perpetual and hereditary leases of the late Empire, was the obligation assumed by the lessee of improving the land and keeping it in constant cultivation[4] (ἐμφυτεύειν = to plant in). On assuming possession of the uncultivated land the emphyteuta was given complete exemption from rent for three years, while if the land was of mediocre quality, although not deserted, he was freed from rent for two years.[5] After the expiration of the years of exemption a very moderate canon was to be paid.[6] The most favorable feature of the emphyteutic lease was the fact that the leasehold could not be burdened with higher rents or taxes in subsequent years. "For it is absurd," said a rescript of Theodosius II and Valentinian III, "that those who at our request have un-

[1] *Cod. Just.*, xi, 63, 2.

[2] *Cf.*, Beaudouin, *op. cit.*, pp. 347, 576; Garsonnet, *op. cit.*, pp. 149-150.

[3] Beaudouin, *op. cit.*, p. 546, 572.

[4] *Cod. Just.*, iv, 66, 2 and 3. *Nov.*, 7, 3, 2; 120, 8. *Cf.* Mitteis, "Zur Geschichte der Erbpacht in Altertum," *Abhandl. der philol.-histor. Cl. d. königl. sächsisch. Gesell. d. Wiss.*, xx, p. 64.

[5] *Cod. Theod.*, v, 14, 30; *Cod. Just.*, xi, 59, 7.

[6] *Cod. Just.*, xi, 65, 4; *Cod. Theod.*, v, 15, 20.

dertaken to improve poor and unproductive soil at great labor and expense and possibly to the great detriment of their own family fortunes, should be deceived (by our promises) and forced to bear an unexpected burden . . . which, if they had foreseen it, would have caused them to be unwilling to enter upon the lease or even to cultivate the land." [1] However, if the land was allowed to deteriorate or if the rent was not paid for three years in case of crown lands or two years in case of church property the estate reverted to the lessor.[2]

The emphyteutic lease was by no means a new creation of the late Empire. It had been, under other names, indeed, frequently practiced in the past in Greece,[3] Egypt [4] and no doubt in other lands where the Hellenic influence was strong. But it had never been seized upon by any nation and applied with such desperate thoroughness as by the Roman administration in the late Empire, until it well-nigh supplanted all other forms of agricultural tenure. Yet, advantageous as the benefits of the emphyteutic leases were to the *conductores* and stringent as their obligations were in maintaining the constant cultivation of the land, the fields continued to be deserted. In 365 A. D. we read of the emphyteutic *conductores* complaining of desertion of their fields and asking for remission of their canon.[5] In 395 A. D. it was stated that there were 528,042 jugera of *agri*

[1] *Cod. Just.*, xi, 59, 17. "... quoniam nimis absurdum est eos qui nobis hortantibus fundos inopes atque egenos magno labore impenso aut exhausto patrimonio vix forte meliorare potuerint, utpote deceptos inopinatum onus suscipere, .. quod si se daturos praescissent, fundos minime suscipere aut etiam colere paterentur."

[2] *Cod. Just.*, iv, 66, 2, 1; Nov. 7, 3, 2.

[3] For the Greek leases, *εἰς τὸν ἅπαντα χρόνον*, *ἀενάως*, *εἰς πατρικά*, etc. which were essentially the same as Roman emphyteusis, see Guiraud, *La propriété foncière en Grèce*. pp. 426 *et seq.*

[4] *Cf. supra*, pp. 211, 213.

[5] *Cod. Just.*, xi, 62, 3.

deserti in Campania alone.[1] The beneficial features of the emphyteutic legislation were not sufficient to keep the land in cultivation. It was necessary to apply force as well.

The many attempts which the Romans made to compel the northern barbarians to cultivate waste and abandoned land within the Empire we have already discussed in detail.[2] "*On account of the scarcity of grain,*" says the *Constitutio de Scyris,* the most famous of the documents on the barbarian settlements, "it will be permitted to keep them (the barbarians) in the transmarine provinces and to attach them to estates forever."[3] On lands where the native peasant class had failed to make a living not much could be expected from untutored and restless barbarians; and it was only on the exhausted lands of the border that these semi-military, semi-agricultural settlements of barbarians showed any signs of permanence. Yet the repeated attempts of the Roman administration to locate barbarians forcibly on *agri deserti* within the Empire shows that it was neglecting no means, however unpromising, of keeping the land in cultivation.

Far more important was the so-called ἐπιβολή[4] legislation, the most astonishing and arbitrary agrarian legislation in the world's history. The first law of which we have record was an edict of Aurelian (270-275 A. D.) which assigned all deserted lands within the territory of a municipality to the city senators, and, after an immunity of three years, made them responsible for the land tax from these estates.[5]

[1] *Cod. Theod.,* xi, 28, 2.

[2] *Cf. supra,* pp. 74-91.

[3] *Cod. Theod.,* v, 6 (4), 3. "Licet ... *pro rei frumen(tari)ae angustiis* in provinciis transmarinis ... eos retinere et postea in sedes perpetuas (conl)ocare." *Cf. supra,* pp. 34-35.

[4] The forcible addition of exhausted land to productive land. It was also called *junctio, permixtio,* and *adjectio.*

[5] *Cod. Just.,* xi, 59, 1.

This proved to be a burden so heavy that many of the *curiales* were unable to bear it and Constantine, a half-century later, was forced to transfer the obligation of the ruined *curiales* to the landholders of the district.[1] A second law was drawn up under Constantine in 337. In this the purchaser of an estate was forbidden to buy merely the fertile land of the estate but was required to include in his purchase the unproductive parts as well.[2] Similarly in 371, Valentinian I, Valens, and Gratian ruled that the heirs of an estate must accept the bad land as well as the good, and be accountable for the taxes of both, or else renounce all claim to the whole estate.[3] A few years later Valens, Gratian and Valentinian II decreed that *conductores* of fertile tracts of municipal land must take over unfruitful fields in addition or they would be required to surrender their leases,[4] while, in 383, Theodosius the Great applied the same regulation to lessees of the imperial domains and of the confiscated land of the pagan temples.[5] Finally, in 386, the most drastic of all the ἐπιβολή laws was enacted. This was another edict of Theodosius which provided that a *conductor* was not only responsible for the cultivation of barren tracts of land in the immediate vicinity of his estate, but that he

[1] *Ibid.*, "... praecipimus, ut, si constiterit ad suscipiendas easdem possessiones ordines minus idoneos esse, eorundem agrorum onera possessionibus et territoriis dividantur." Monnier believes that this division of the tax "among the possessions and territories" meant a pro rata distribution of the land tax on these estates to the tax-payers of the district. *Cf. Nouv. rev. hist. de droit fr.*, xvi (1892), p. 331.

[2] *Cod. Just.*, xi, 59, 2; *Cod. Theod.*, xi, 1, 4. The law was re-enacted by Arcadius and Honorius in 398. *Cod. Just.*, xi, 59, 10; *Cod Theod.*, xiii, 11, 9.

[3] *Cod. Just.*, xi, 59, 4; *Cod. Theod.*, xi, 1, 17.

[4] *Cod. Just.*, xi, 59, 5.

[5] *Cod. Just.*, xi, 59, 6; *Cod. Theod.*, xi, 3, 4.

might be compelled to cultivate and pay taxes on abandoned fields located at a distance.[1]

However, arbitrary and harsh as these measures were, they were closely linked with the emphyteutic legislation. In case a *conductor* could show that he was improving his leasehold, the emperors Gratian, Valentinian II, and Theodosius I decreed that he could not be forced to undertake the cultivation of more than one abandoned tract of land.[2] While Theodosius II declared that *conductores* who undertook the reclamation of abandoned land would be free from the imposition of ἐπιβολή (*adjectio*) forever.[3]

It is only in connection with the contemporaneous emphyteutic and ἐπιβολή legislation that the adscription of the coloni to the soil can be understood in proper perspective. The same cause which induced the wealthy landholders to abandon the cultivation of much of their lands operated with equal force upon the humble tenants and led them to desert their holdings. A vast area of land had simply ceased to yield a remunerative return and neither landlord nor tenant wished to keep up the gratuitous struggle. "My farm is in bad condition," wrote Symmachus in the fourth century, "and a large part of the returns is in arrears, while the coloni have no means either to pay their accounts or to keep up cultivation."[4] "The property which has fallen to me must be inspected," he wrote in another letter, "not that I have any hopes of making it profitable but in order

[1] *Cod. Just.*, xi, 59, 7, 2. "... ut primum vicinas et in eodem territorio sortiatur, dehinc si neque finitimas neque in isdem locis reppererit constitutas, tunc demum etiam longius positas ... suscipiat."

[2] *Cod. Just.*, xi, 71, 2.

[3] *Nov. Theod. II*, xxvi, 1, 4. "... nullamque eos descriptionem aut adjectionem aut innovationem in posterum sustinere."

[4] Symmachus, *Epist.*, vi, 81. "Neque ager cultura nitet et fructuum pars magna debetur, nihilque iam colonis superest facultatum, quod aut rationi opituletur aut cultui."

to keep up the farm by further expenditures. For it has come to be the custom in our age that *the land which once fed us now itself must be fed.*" [1] In consequence of the unremunerative character of agriculture in many districts the proprietors of the land and the great capitalist lessees of the imperial domains were either offered extraordinary inducements to keep poor land under cultivation or else they were forcibly presented with tracts of barren land and held accountable for the taxes; while the coloni were attached in perpetuity to the estates which in many cases they were trying to desert.

The legal attachment of the coloni to the soil was an enactment which applied as much to the proprietors of the estate as to the tenants. Under no circumstances were landlords allowed to sell, bequeath, or even give away land without the coloni. "If they (the proprietors) think that the coloni are of use," said Constantius in a rescript of 357, "either they ought to retain them on their own estates, or, if they despair of making their land profitable, they should relinquish them to the men to whom they have surrendered their estates." [2] The coloni are "the slaves of the land itself on which they were born". [3] They cannot be separated from their fields, said Justinian, "for it is sufficiently inhuman to deprive the land of its members". [4] Not only the proprietors but the Treasury itself was not allowed to

[1] Symmachus, *op. cit.*, i, 5. "Sed res familiaris inclinata a nobis usque quaque visenda est, non ut quaestuum summa ditescat, sed ut spes agri voluntariis dispendiis fulciatur. Namque hic usus in nostram venit aetatem, ut *rus, quod solebat alere, nunc alatur.*"

[2] *Cod. Just.*, xi, 48, 2. "Qui enim colonos utiles credunt, aut cum praediis eos tenere debent aut profuturos aliis derelinquere, si ipsi sibi praedium prodesse desperant."

[3] *Cod. Just.*, xi, 52, 1. "... servi tamen terrae ipsius, cui nati sunt."

[4] *Cod. Just.*, xi, 48, 23, *pr.* "Cum satis inhumanum est terram ... suis membris defraudari."

break the bonds which attached the coloni to the soil. "The coloni must never be disturbed in their tenure by the tax-collectors by reason of any arrears in taxes," ordered Honorius and Theodosius II, "because they are so closely bound to the soil that they may not be detached even for a single moment" [1] Nor was the Treasury allowed to levy additional taxes against the peasants while they were engaged in planting or harvesting the crops; "for," said Constantine, "the occasion favorable to finishing this important work must not be permitted to be lost." [2]

At about the same time that free tenants were bound to the soil, laws were passed depriving landholders of the right to sell agricultural slaves from the land or to sell the land without the slaves who had been accustomed to work it.[3] This was utterly contrary to the old Roman law of slavery which gave the master almost complete control over his slaves. But in the face of the great menace of ever-increasing stretches of barren and deserted land old rights and privileges had to go by the board. "Everyone is forced by the pressure of inexorable laws to submit his own fortune that the public interest may not suffer," said Theodosius II in a rescript of 440.[4] The land must be cultivated for sufficient food products must be raised to feed the population of the Empire and to support the army and the official bureaucracy, whose maintenance was necessary to prevent the breaking of the bonds which held the Empire together.

[1] *Cod. Just.*, xi, 48, 15. "Colonos numquam fiscalium nomine debitorum ullius exactoris pulset intentio: quos ita glebis inhaerere praecipimus, ut ne puncto quidem temporis debeant amoveri."

[2] *Cod. Just.*, xi, 48, 1. "... cum providentiae sit opportuno tempore his necessitatibus satisfacere."

[3] *Cod. Just.*, xi, 48, 7; xii, 35, 10.

[4] *Cod. Just.*, x, 71, 4. "... pro definitione legum inexorabilium suam fortunam subire compelli, quatenus nec publicis quicquam noceatur."

The legal attachment of the coloni to the soil brought with it considerable advantages both in respect to the administration of recruiting and of taxation. In fact many writers have maintained that these advantages were sufficient in themselves to account for the colonate legislation. Where the coloni were bound to the soil it was much easier to allocate justly the number of recruits to be drafted from each district than in the case of a roving peasant class. Similarly, the poll tax (*capitatio humana*) could be collected with much greater ease where the residence of the colonus was fixed and unchangeable; and since the proprietor of an estate was made responsible for the poll tax of his tenants it would have been extremely difficult to administer the tax if the coloni had been allowed to desert their holdings in large numbers.[1] Even more advantageous was adscription of the coloni in the case of the land tax (*jugatio terrena*). The evaluation of the land upon which the land tax was based was made probably every five years.[2] During the five-year periods the cadastre remained practically uniform, although in case of some disaster such as an earthquake or drought deductions were allowed,[3] while an increase in the value of the estate through birth of slaves or live stock within the assessment period also was to be declared.[4] The *decuriones* were responsible for the land tax within their districts, and in case it fell short of the assessed amount they were compelled to make up the deficit from their own private resources. Consequently, the suc-

[1] *Cf.* Fustel de Coulanges, *Recherches*, pp. 80-86, 89-91.

[2] *Cf.* Seeck, in *Deutsche-Z. f. Geschichtswissensch.*, vol. xii (1894), pp. 279 *et seq.*, and in Pauly-Wissowa, *Real-Encycl.*, vol. iv, p. 407. The older belief was in a fifteen-year census period. *Cf.* Savigny, *Vermischte Schriften*, vol. ii, pp. 126-134; Humbert, *Essai sur les finances chez les Romains*, vol. ii, pp. 348-349.

[3] *Dig.*, L, 15, 4, 1.

[4] *Dig.*, L, 15, 4, 9.

cessful administration of the tax depended upon the maintenance of agriculture in each district. Desertion of the land by the coloni on a large scale or the abandonment of cultivation by proprietors would have resulted in serious loss if not ruin to the *decuriones,* and probably the breakdown of the whole system of delegated responsibility for taxation. The passage of the laws binding the coloni forever to their estates and forcing the large landholders to keep barren tracts of land in cultivation enabled this rigid system of tax administration to subsist a while longer, even though it did occasionally crush the *decuriones* in regions where the whole force of the administration was not able to keep the land in cultivation.

But these advantages of the adscription of the coloni and of the ἐπιβολή legislation were merely incidental. Desertion of the fields meant far more to the Empire than an embarrassment to a rather clumsy and inflexible system of tax administration. It meant that the source itself of the principal tax of the realm was wasting away, so that unless it were arrested, no tax administration, however efficient, could obtain sufficient revenue to maintain the imperial government. Still more important, it meant that the surplus of agricultural products above the mere necessities of subsistence of the peasants would soon be so small that it could not support a metropolitan or imperial economy.

All civilization depends upon the surplus of product over cost. From the time of the early Republic Rome had developed a military and administrative organization which had proved supremely successful in the work of conquest and exploitation of the conquered land. But as Rome extended her dominion it was necessary continually to increase the size of the military and administrative organization which gathered in the fruits of victory, while the success of the legions provided untold wealth and luxury for the great,

and bread and circuses for the rabble. The result was that although the surplus furnished by the productive classes of the Empire was very considerable the requirements of the administration and of the parasitic classes were so great that the productive capacity of the Empire was always taxed to the limit.

The time eventually came when the returns from agriculture, the most vital form of production, began to decline. The soil which had responded so long with bountiful harvests began to show the results of the heavy tribute which did not permit the conservation of the elements of fertility. As long as the decline of the productivity of the soil was merely local it could be met by securing a part of the surplus from other districts. But by the fourth century the decadence of agriculture had become so widespread that it threatened the great imperial economy itself which Rome had constructed. To arrest this decline, to induce the cultivation of the fields by encouragement or by force, to prevent the exhausted soil from turning into a barren desert or a malarial marsh was the essential object of the emphyteutic and ἐπιβολή legislation; and it was precisely the same cause which led to the adscription of the tenantry to the soil in the perpetual bonds of the colonate. At approximately the same time, as writers from the time of Carl Hegel have pointed out,[1] the industrial classes were similarly bound to their *collegia*. The decline in the yield of the land tax had compelled the government to recoup itself by levying heavier taxes on industry. The attempt of the industrial classes to escape their new obligations led the administration to take the same restrictive measures against them that it had against the peasantry.[2] The exhaustion of the soil in so

[1] *Cf. supra*, pp. 53-54, 55, 96, 102, 110, 132, 136, 183.

[2] *Cf.* Brown "State Control of Industry in the Fourth Century," *Pol.*

many districts of the Empire was proving a fatal malady which affected the whole body politic. The legislation of the Codes was so drastic because a desperate situation was to be met; and this legislation was effective in keeping an agricultural population and somehow maintaining agricultural production.

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